TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~397.~~ 165 22

THE STATE, EX REL. JAMES ROBB AND CHARLES T. LOWNDES, TRUSTEES, PLAINTIFFS IN ERROR,

vs.

WILLIAM GURNEY, COUNTY TREASURER OF CHARLESTON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED NOVEMBER 22, 1871.

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1 UNITED STATES OF AMERICA:

The President of the United States to the honorable the justices of the supreme court of the State of South Carolina, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State, ex relatione James Robb and Charles T. Lowndes, trustees, and William Gurney, county treasurer of Charleston County, wherein was drawn in question the validity of a treaty or statute of or of an authority exercisd under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the de-

2 cision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said James Robb and Charles Lowndes, trustees relators, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and seventy-one.

DAN'L HORLBECK,
Clerk of Circuit Court of U. S. for So. Carol.

3 Allowed by—

FRANKLIN J. MOSES,
Chief Justice of Supreme Court of So. Ca.

4 (Indorsed:) James Robb and Charles T. Lowndes, trustees, plaintiffs in error, vs. William Gurney, county treasurer of Charleston County, defendant in error. Writ of error from the Supreme Court of the United States to the supreme court of the State of South Carolina.

5 United States of America to William Gurney, county treasurer Charleston County, in the State of South Carolina, greeting:

You are hereby cited & admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's

office of the suprome court of South Carolina, at Columbia, wherein the State, ex relatione James Robb & Charles T. Lowndes, *are* plaintiff, & you are defendant, to show cause, if and there be, why the judgment in said writ of error mentioned should not be corrected, & speedy justice should not be done to the parties in that behalf.

Witness Franklin J. Moses, chief justice of the supreme court of the State of South Carolina, this twenty-fourth day of August, in the year of our Lord 1871.

F. J. MOSES,
Chief Justice of Supreme Court of So. Ca.

AUG. 24, 1871.

6 (Indorsed:) 638, 703. B 62. James Robb & Charles T. Lowndes, trustees, v. William Gurney, county treasurer of Charleston County. Citation.

COLUMBIA SO. CA., *August* 28, 1871.

This doth certify that, on the twenty-eighth day of August, 1871, I personally served J. A. Dunbar, one of the firm of Chamberlain, Seabrook & Dunbar, who are attorneys for William Gurney, with a copy of this citation, & exhibited to him this original.

[SEAL.] PHINEAS FRAZEE,
Sheriff of Richland County, So. Ca.

Service of this citation sworn to before me this 28th day of August, A. D. 1871.

[SEAL.] D. B. MILLER, *C. C. C.*

Lodged 28th Aug., 1871.

P. F. FRAZEE, *S. R. C.*

Sh'ff Frazee's costs: Ent., 50; service, 1.00; cl'k probate, 50—$2.00. Rec'd August 31st, 1871.

E. W. M. MACKEY, *S. C. C.*

7 SHERIFF'S OFFICE, CHARLESTON COUNTY,
Aug. 31, 1871.

I hereby certify that, having duly ascertained that the defendant, William Gurney, and D. H. Chamberlain, attorney-general and counsel of William Gurney in this cause, are both beyond the limits of this State, I served this citation upon the said William Gurney by leaving a copy thereof at his residence in Charleston, and that I handed a copy thereof to A. W. Gurney, the agent of the said William Gurney, and in charge of his office of county treasury, at the said office, and did then exhibit to him this original.

E. W. M. MACKEY, *S. C. C.* [SEAL.]

Service of the above sworn to before me this 31st day of August, A. D. 1871.

[SEAL] A. C. RICHMOND, *C. C. P.*

8 THE STATE, EX RELATIONE JAMES ROBB & Charles T. Lowndes, trustees,
v.
WILLIAM GURNEY, COUNTY TREASURER OF Charleston County.

Know all men by these presents that we, James Robb & Charles T.

Lowndes, & William Thayer, are held & firmly bound unto the above-named William Gurney, in the sum of one thousand dollars, to be paid to the said William Gurney, his executors or administrators; to which payment, well & truly to be made, we bind ourselves & each of us, jointly & severally, & our & each of our heirs, executors, and administrators, jointly & severally, firmly by these presents, sealed with our seals, & dated this of , A. D. one thousand eight hundred & seventy-one.

Whereas the above-bound James Robb and C. T. Lowndes and William Thayer have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of South Carolina:

9 Now, the condition of this obligation is such, that if the above-named James Robb and Charles T. Lowndes, trustees, shall prosecute their said writ of error to effect, & answer all damages & costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall remain in full force & virtue.

JAMES ROBB.
C. T. LOWNDES.
Pp. W. THAYER.
WILLIAM THAYER.

Signed, sealed, & delivered in presence of—
EDWIN F. COREY.
WILLIAM H. BOWERS.

10 (Indorsed:) James Robb and Charles T. Lowndes, trustees, vs. William Gurney, county treasurer of Charleston County. Copy of bond to prosecute writ of error.

This bond being satisfactory to me, I approve it. Approved.
F. J. MOSES,
Chief Justice of Supreme Court of So. Ca.

AUG. 24, 1871.

11 The answer of the justices of the supreme court of the State of South Carolina to the foregoing writ.

The record and process, whereof mention is therein made, follow in these words, to wit:

12 THE STATE OF SOUTH CAROLINA,
First District, Charleston County:

In common pleas, April term, 1871, before Hon. R. F. Graham.

THE STATE, EX RELATIONE JAMES ROBB AND C. T. Lowndes, trustees,
vs.
WILLIAM GURNEY, COUNTY TREASURER, FOR the county of Charleston.

To the Honorable R. F. Graham, judge of the court of common pleas for the said county:

Ja's Robb and C. T. Lowndes, trustees, show unto your honor that the legislature of this State, by an act entitled "An act to establish a bank on behalf of and for the benefit of the State," passed at the session of said legislature in December, 1812, did establish a bank "in

13 the name and on behalf of the State of South Carolina, in the manner and on the limitations and conditions" set forth in the said act. And the said bank became thereby incorporated and made a corporation and body politic by the name and style of "The President and Directors of the Bank of the State of South Carolina;" that the stocks and securities transferred to the said bank as its capital were, by the said act, vested in the president and directors thereof, and in the said act it is further declared that "the faith of the State is hereby pledged for the support of the said bank, and to supply any deficiency in the funds specially pledged, and to make good all losses arising from such deficiency."

That, by the 16th section of the same act, it is further enacted "that the bills or notes of the said corporation originally made payable, or which shall have become payable, on demand, in gold or silver coin, shall be receivable at the treasury of this State, either at Charleston or Columbia, and by all tax-collectors and other public officers in payment for taxes and other moneys due the State."

That the legislature of the said State, at its session in December, 1833, declared that it was expedient and beneficial, both to its citizens and the State, to recharter the said bank, and it did thereupon enact that an act entitled "An act to establish a bank on behalf of, and for the benefit of, the State," passed on 19th December, A. D. 1812, and all other acts now of force relating to the conduct and operations of the said bank be, and they are hereby, re-enacted and continued of force until the 1st day of May, A. D. 1856.

That the legislature of the said State, at its session in December, 1852, did, in an act entitled "An act to extend the charter of the Bank of the State of South Carolina," enact that, from and after the expiration of the present charter of the Bank of the State of South Carolina, the same shall be, and is hereby, extended until the first day of January, A. D. 1871.

14 That the said bank, under the provisions of the charter originally so granted, commenced, and, under the renewals thereof, continued to carry on and conduct the business of a bank of discount and deposit, and under authority, for that purpose granted by the legislature of the said State, did from time to time establish agencies in certain other parts of the State, besides its principal office and place of business in Charleston.

That the said bank, in the execution of the power to that end given by the charter, did from time to time issue, put forth, and circulate as money, its certain bills or notes, which said bills or notes were originally payable and became payable in gold or silver. And of such description and of that legal obligation, were all the bills or notes from time to time issued by the said bank, save and except those which were issued by the said bank under the authority of an act of the legislature, passed and ratified on the 6th day of February, A. D. 1863, by which said act the said bank was authorized to issue and keep in circulation bills of a denomination of less than one dollar, to the extent of five hundred thousand dollars: *Provided*, That the said bills shall be made payable in current funds, and be paid out for confederate and other current issues; but, with the exception of bills or notes so issued, all the bills and notes issued were bills or notes payable in gold or silver. That the operations and business of the said bank as a bank of issues and deposits, continued until the legislature of the said State, by an act passed and ratified the 21st day of December, A. D. 1865, authorized and required the said bank to close its agencies, and declared that the principal bank in Charleston

shall cease to be a bank of issue, but continue to act as a bank of deposit, until the further action of the legislature. That, with the exception of the bills issued under the said act of 1863, all the bills of the said
15 bank were bills originally payable in gold or silver, and would become so, and could have no other legal obligation than this.

That the promise to pay the sum expressed in the bill was, except in the bills or notes issued under the act of 1863, a promise to pay in gold or silver, if so required; and the obligation of the bank in that behalf could not be in anywise affected or controlled by the bank or the legislature.

That the several acts of the legislature, by which, as it is said, the bank was authorized to suspend the payment in gold or silver of the bills of the bank, did only operate, and could not otherwise operate, than to save the bank from the forfeiture of its charter; which otherwise would result from its refusal or neglect to redeem its bills in gold or silver when required so to do, unless relieved from such consequence by the authority of the State. But that no act of the legislature could change the legal obligation of the bank to the holder of its bills, to redeem the same in gold or silver when required; nor could the legislature, by the suspension of its right to enforce a resumption of the charter granted to the bank, because of the neglect or delay of the bank to pay and redeem its bills in gold or silver, so affect the legal obligation of the bank in relation to bills issued by it, that the holders of such bills, creditors of the bank, without any qualification of the liability of the bank expressed on the face of the bill or note, could be deprived of the protection of so much of the Constitution of the United States as provides that no State shall make anything but gold or silver a tender in payment of debts; and that no State shall pass any law impairing the obligations of contracts.

That all bills, therefore, of the said bank, with the exception of such as were issued under the act of 1863, were bills originally made payable, and which became payable on demand in gold or silver coin. And such bills, therefore, by the express language of the act of 1812, be-
16 came receivable at the treasury of the State, and by other public offices, in all payments for taxes or other moneys due the State.

That, while in the case of other incorporated banks the provision which authorized their bills to be received in payment of taxes was a general authority to the tax-collector for that purpose, in the case of bills of the bank of the State, it was so expressly provided and incorporated, with all the other obligations by the said act of 1812, attached to the bills of the bank of the State, and became a contract with the holder or holders of such bills or notes.

That the 16th section of the said act of 1812, was a contract between the State and the holder or holders of such bills or notes, and bound the State until, in plain and express terms, it was modified or repealed; and that in this case, no such modification or repeal of the said section has been made.

That no act of the legislature of the State did ever repeal the 16th section of the act of 1812, in express terms, or by any proper or necessary implication, previous to the year 1865. And that the bills of the bank were receivable and continued to be received in payment of taxes until the year 1865, when the legislature of the State declared, in an act then passed, that the taxes therein levied shall be paid only in gold or silver coin, United States Treasury notes, or notes declared to be a legal tender by the Government of the United States, or notes of National banks, or the "bills receivable of this State." And that thus,

from the year 1812 until the year 1865, the bills of the bank of the State were always received in payment of taxes due the State; that during the whole period of time while this bank continued its operations as a bank, its capital contributed by the State was pledged for the satisfaction of its creditors; and with the capital of that bank in its possession, the bank would be entirely solvent.

17 And being so, its bills would be good for the amounts for which on their face they are expressed to be given. But that the State has withdrawn, or otherwise, in a manner not authorized by law, appropriated the whole capital or assets of the bank to its own use, without regard to the just rights of those who held and now hold the bills or notes of the said bank, and in violation of the declaration in its charter to the bank that the faith of the State is pledged for the support of the bank.

That the State of South Carolina as the sole stockholder, has no other or higher rights to control the capital or assets of the said bank to the injury of its creditors than any other person or persons, being such stockholders, would have.

The legal obligations of a stockholder to restore to the bank so much al least of its capital withdrawn by him as would be necessary to satisfy the claims of its creditors is of admitted truth. And the State cannot, in justice, or by any rule of law, by withdrawing from the creditors of the bank its assets, the State being the sole stockholder, and affecting by that means the value of said bills or notes, convert that consequence produced directly by its own conduct into an occasion for its objection and refusal to accept such bills in payment of taxes, because of any allegation by it that the said bills are of little value. Nor can the State, by relieving the bank from the consequence of its neglect or delay to redeem its bills or notes in gold or silver coin, make that delay or refusal so authorized by it, the occasion for, or cause of, objection to its performance of the guarantee it assumed in relation to such bills.

That your relators are the bona-fide holders and owners as trustees for the creditors of Jno. Fraser & Co., of bills of the said bank, issued by it previous to the year 1860; that such bills were issued previous to the war lately waged between the United States and the States

18 then styling themselves the Confederate States, and before the existence of the said Confederate States as a political body, and before the enactment by the State of South Carolina of the so-called ordinance of secession, and were issued by the bank in pursuance of its powers under its charter, and in the ordinary course of its business, were applied solely to the purposes for which the said bank had been authorized to issue its bills; and were bills or notes originally made payable, and which have become payable, on demand, in gold or silver coin.

That, previous to the issue of said bills, no repeal of the 16th section of the act of 1812 had been enacted by the legislature. That nothing contained in the act of the legislature of 1843 could be so construed, or was intended to be construed into a repeal of the 16th section of the act of 1812, as the tax-collectors of the said State continued to receive the bills of the said bank in payment of taxes. That the renewal of the charter by the act of 1833 was not more explicit than was the act of 1852, when the charter was again renewed, and in which it is declared that the present charter of the bank, referring necessarily to the charter of 1812, shall be extended until the 1st day of January, 1871. That these relators, as trustees of the creditors of J. F. & Co., are seized in

fee of a large amount of real estate in Charleston County, and as such trustees are indebted to the State for taxes on the said trust-property in the sum of $6,324.21, and that William Gurney is the county treasurer for the said Charleston County. That these relators are the bona-fide owners and holders, as trustees as aforesaid, of bills of the bank of the State, issued prior to 20th December, A. D. 1860, in amount sufficient to pay the said taxes; and that they have offered to the said William Gurney to pay the said taxes with the said bills; and that the said William Gurney has refused to receive the said bills in payment of the said taxes; and that tender of the said bills in payment of the said
19 taxes were made by these relators; and that such tender and offer of payment was made under the 16th section of the act of 1812; and that the said W. Gurney has refused to accept such bills or notes in payment of the said taxes; and that the said Gurney, treasurer of Charleston County has threatened, and now is about to enforce an execution against the said relators as trustees as aforesaid, for the payment of the said taxes, amounting to $6,324.21.

Wherefore these relators pray that a rule may issue, directed to the said W. Gurney, treasurer of Charleston County, commanding him, at such place and time as may be specified in the said order, to show cause why a writ of mandamus should not issue compelling him to receive the said bills of the "President and Directors of the Bank of the State of South Carolina," in payment of taxes due the State of South Carolina by these relators as trustees as aforesaid.

MAGRATH & LOWNDES,
For the Relators.

STATE OF SOUTH CAROLINA, *Charleston County*:

Personally appeared before me C. T. Lowndes, one of the relators above-named, who, being duly sworn, says that the matters and things hereinbefore stated and set forth, are just and true, according to the best of his knowledge, information, and belief.

(Signed) C. T. LOWNDES.

Sworn to before me this 21st day of March, 1870.

[L. S.] R. T. SMITH, *Notary Public.*

20 THE STATE, EX RELATIONE JAMES ROBB and C. T. Lowndes, trustees,
vs.
WILLIAM GURNEY, COUNTY TREASURER OF Charleston County.

On hearing the application for the relator for a rule directed to William Gurney, county treasurer of Charleston County, to show cause why a mandamus should not issue requiring him to receive the bills of the corporation known as the "President and Directors of the Bank of the State of South Carolina" in payment of taxes claimed to be due to the State of South Carolina by the relators, as set forth by them, and payment of which is about to be enforced by the said county treasurer, it is ordered that the rule do issue as asked for, and that the said William Gurney, treasurer of Charleston County, do, in his return to such rule, show cause why the said relator should not be allowed to pay, and the said W. Gurney, county treasurer of Charleston County, be required to receive, the said bills alleged to be so tendered by the relators in payment of the said taxes, according, as is alleged, to the sixteenth section

of an act entitled "An act to establish a bank on behalf of and for the benefit of the State," and that the said rule be made returnable on the 28th day of April, A. D. 1871. It is further ordered that until the hearing of the matter set forth in the application and the return to the said rule, and the judgment of the court thereon, that the relators shall have leave and may apply for a further order if they shall so desire, or if the same may be necessary, that all proceedings to enforce the payment of such taxes of the relators as trustees as aforesaid may be stayed.

(Signed) R. F. GRAHAM.

MARCH 22D, 1871.

21 STATE OF SOUTH CAROLINA, *Charleston County:*

In the common pleas.

THE STATE, EX RELATIONE JAMES ROBB AND C. T. Lowndes, trustees,
vs.
WILLIAM GURNEY, COUNTY TREASURER OF Charleston County.

Respondent's return.

To the Honorable R. F. Graham, judge of the first circuit of the said State:

William Gurney, county treasurer of the county of Charleston, in the said State, in return to a rule to show cause why the relators above named should not be allowed to pay to this respondent, as county treasurer for the county of Charleston, and this respondent be required to receive, the bills or notes of the corporation known as the President and Directors of the Bank of the State of South Carolina, of the issues of the said corporation previous to the year 1860, in payment of taxes due from the said relators to the State of South Carolina, which said bills or notes have been tendered by said relators in payment of said taxes, respectfully showeth for cause that the corporation known as the President and Directors of the Bank of the State of South Carolina was created a body corporate and politic by an act of the general assembly of the said State, passed in December, 1812, entitled "An act to establish a bank on behalf of and for the benefit of the State."

22 First. That the sixteenth section of the said act, creating said corporation, is as follows: "That the bills or notes of the said corporation, originally made payable, or which shall become payable on demand, in gold or silver coin, shall be receivable at the treasury of this State, either at Charleston or Columbia, and by all tax-collectors and other public officers in all payments for taxes or other moneys due to the State.

That said act of incorporation, together with all other acts of force relating to the conduct and operations of the said bank in December, 1833, were re-enacted and continued of force until the first day of May, 1856. That, in December, 1852, the general assembly of the said State, by an act, entitled "An act to extend the charter of the Bank of the State of South Carolina," did extend the then existing charter of the said bank until the first day of January, 1871.

Second. That, under the authority conferred by the above-mentioned acts, the said corporation did, from time to time, make and put forth its bills or notes, and, previous to the year 1860, it made and put forth cer-

tain of its bills or notes, whereof it is alleged that the said relators now hold a portion which the said relators now seek to compel the respondent to receive in payment of taxes, due by the said relators, as trustees of the creditors of the firm of John Fraser & Company, to the State of South Carolina.

Third. And this respondent, for cause why the mandamus ought not to issue as prayed for, and why the rule herein ought to be discharged, shows that, under the settled practice of the courts, and the law applicable to this process, the mandamus prayed for ought not to issue, because the court has no authority to compel an officer to do an act which, without its command, it would not be lawful for him to do; and that the failure of the legislature to authorize the county treasurer to receive the bills or notes of the bank of the State of South Carolina
23 in payment of taxes, will not authorize this court to compel the county treasurer, by mandamus, to receive the said bills or notes in payment of taxes.

Fourth. And the respondent, for cause why said bills or notes should not be received in payment of said taxes, due by said relators, shows that said sixteenth section of the act of incorporation of the said bank, was intended to bind, and did bind, the said State to receive said bills or notes in payment of taxes only when such bills or notes are payable, or shall become payable in gold or silver coin on demand, and did not bind the said State to receive the bills or notes now held by the said relators, because said bills or notes of said relators are not now payable in gold or silver coin on demand, and "before the relators complain of the breach of the contract by the State, he must show a performance by himself," to wit, "the tender of notes or bills payable in gold or silver coin on demand." (Graniteville Manufacturing Company vs. Roper, 15 Rich., 138.)

Fifth. And this respondent shows, for further cause, why said bills should not be received in payment of said taxes, that, by an act of the general assembly of said State, passed December 19th, 1843, it was enacted "that all taxes for the use and service of the State shall be paid in specie, paper medium, or the notes of the specie-paying banks of this State." That whatever might have been the nature and scope of the said sixteenth section of the said act of 1812, the act of 1843, last above referred to, was a virtual repeal of the said sixteenth section of the act of 1812. (Graniteville Manufacturing Company vs. Roper, 15 Rich., 138.)

That, therefore, this respondent is not bound to receive the said bills or notes tendered by the said relators, because the said bills or notes were issued subsequent to December 19th, 1843, and at a time
24 when no contract existed between the holders of said bills and the said State, to receive said bills in payment of taxes due to the said State. (Woodruff vs. Trapnell, 10 Howard, 190.)

Wherefore the rule in this case ought to be discharged.

WILLIAM GURNEY,
County Treasurer for County of Charleston.

STATE OF SOUTH CAROLINA, *Charleston County:*

Personally appeared William Gurney, county treasurer of Charleston County, and, on oath, says that the matters and things set forth in the foregoing return, as of his own knowledge, are true; and such as purport to be derived from the information of others, he believes to be true.

Sworn to before me this day of April, A. D. 1871.

THE STATE, EX REL. JAMES ROBB AND CHARLES T. Lowndes, trustees,
vs.
WILLIAM GURNEY, COUNTY TREASURER OF Charleston County.

And the said relators, by Magrath & Lowndes, their attorneys, in reply to the return of the said William Gurney, county treasurer of Charleston County, come and deny that the matters and things set forth in the said return are sufficient answer or return to the prayer of the relators; wherefore the relators pray that the rule be made absolute, and the mandamus issue as prayed for.

MAGRATH & LOWNDES,
Attorneys for Relators.

25 In the common pleas.

THE STATE OF SOUTH CAROLINA, *Charleston County:*

JAMES ROBB AND C. T. LOWNDES
vs.
WILLIAM GURNEY, COUNTY TREASURER FOR Charleston County.

Order.

The relators in this case ask a mandamus to the county treasurer for Charleston County, to compel him to receive in payment of taxes, due from the relators to the State, the bills of the bank of the State. These bills are of the issues made prior to December 20, 1860.

The relators claim that the sixteenth section of the act of 1812, incorporating the bank of the State, created an unqualified contract between the holders of the bills of said bank and the State, requiring the State to receive them at all times in payment of taxes.

The return of the respondent sets forth, among other matters, that no contract exists requiring the State to receive the said bills in payment of taxes, unless said bills are redeemable at the time of tender "in gold and silver coin;" that the sixteenth section of the char-
26 ter of the bank of the State supports and establishes this view, which is also sustained by the decision of the court of errors of this State, in the case of The Graniteville Manufacturing Company vs. Roper, tax-collector, 15 Rich. Rep., 138.

The return further sets forth that the present is not a case in which the writ of mandamus is applicable.

Full arguments were made on the hearing by Mr. Magrath for the relators, and Mr. Chamberlain, attorney general, for the respondent.

Upon consideration whereof, and of the several questions involved, and especially upon the authority of the case of The Graniteville Manufacturing Company vs. Roper, tax-collector, it is now ordered and adjudged that the rule be discharged.

R. F. GRAHAM.

MAY 4, 1871.

JAMES ROBB AND C. T. LOWNDES, TRUSTEES,
vs.
WILLIAM GURNEY, COUNTY TREASURER FOR Charleston County.

The relators in the above case appeal from the order of Judge Graham on the following grounds:

1. Because the sixteenth section of the charter of The President and Directors of the Bank of the State of South Carolina constituted a contract between the State and the holders of the notes of the bank, which the State was not at liberty to break, and tender of notes issued prior to the repealing act was good.

2. That the notes of the said bank, tendered by the relator, were such notes of the said bank as the State by the sixteenth section of the charter of the bank had declared should be received in payment of taxes.

27 3. That at the time of the issue of the notes of the bank tendered by the relator, no act of the legislature of the State had repealed the sixteenth section of the act of 1812, the charter of the said bank.

4. That the notes of the President and Directors of the Bank of the State of South Carolina, issued by the said bank prior to December 20, 1860, were good as a tender to the county treasurer in payment of taxes due to the State.

5. That mandamus is the proper remedy for the relator in this case to enforce upon the county treasurer such notes in payment of taxes.

6. Because his honor the presiding judge should have made the rule absolute, and ordered the mandamus to issue as prayed for.

MAGRATH & LOWNDES,
For Relators.

In supreme court. April T., 1871.

THE STATE, EX RELATIONE JAMES ROBB & C. T. Lowndes, trustees,
v.
WILLIAM GURNEY, COUNTY TREASURER OF the county of Charleston.

Per curiam:

The court, having heard & considered the said case, it is ordered & adjudged that the appeal be dismissed, & the order of the circuit judge discharging the rule be affirmed. The opinion will be filed hereafter.

F. J. MOSES,
Chief Justice.

JULY 7, 1871.

28 In supreme court. April term, 1871.

THE STATE, EX-RELATIONE T. D. WAGNER and C. T. Lowndes, trustees,
vs.
WILLIAM GURNEY, COUNTY TREASURER for Charleston County.

MOSES, *C. J.*

The suggestion filed by the relator does not aver that the bills of the bank of the State tendered to the respondent, the treasurer of Charleston County, in payment of taxes, were issued prior to the 19th day of December, 1843, on which day the act "prescribing the duties of certain officers in the collection of supplies, the payment of salaries, and for other purposes," was passed. (S't at Large, 11,246.) The case was taken up with that of the State, ex-rel. Wagner vs. Stoll, and argued together by the same counsel for the appellants, on the same grounds, and on the assumption that the bills tendered in both cases were issued by the bank after the passage of the said act.

29 It is therefore identical in principle with the said case of Wagner vs. Stoll, and it is unnecessary to repeat the reasons assigned in that case for the judgment of the court here, which judgment has been already filed.

30 THE STATE OF SOUTH CAROLINA:

In the supreme court. April term, 1871.

THE STATE, EX-REL. JA'S ROBB, & C. T. Lowndes, trustees,
vs.
W'M GURNEY, COUNTY TREASURER FOR Charleston County.

I hereby certify that the above two pages contain a true copy of the original opinion in the entitled case on file in my office.

Witness my hand and the seal of the supreme court, at Columbia, this 14th day of August, 1871.

[SEAL.] ALBERT M. BOOZER,
Clerk Supreme Court.

31 (Indorsed:) Supreme court. April term, 1871. The State, ex-rel. Jas. Robb. & C. T. Lowndes, trustees, vs. W'm Gurney, county treasurer for Charleston County. Opinion. Moses, C. J.

We concur.

A. J. WILLARD, *A. J.*
J. J. WRIGHT, *A. J.*

Certified copy. Original filed 9 August, 1871.

32 THE STATE OF SOUTH CAROLINA:

I, Albert M. Boozee, clerk of the supreme court of the State of South Carolina, hereby certify that the foregoing and annexed 50 pages contain the original writ, citation, and service thereof with copy of writ of error bond filed and approved therein, together with a true and complete transcript of the record, process, and proceedings, and final judgment in a certain cause lately pending in said court, wherein the State, ex-relatione James Robb and Charles T. Lowndes, trustees, was plaintiff, appellant, and William Gurney, county treasurer for Charleston County, was defendant, respondent, as the same remains of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said supreme court, at Columbia, in said State of South Carolina, this 2nd day of October, A. D. 1871, and in the 96th year of the independence of the United States of America.

[SEAL.] ALBERT M. BOOZER,
Clerk of Supreme Court of State of South Carolina.

(Indorsed:) Supreme Court of United States. James Robb & Charles P. Lowndes, trustees, plaintiffs in error, vs. William Gurney, county treasurer for Charleston County, def't in error. In error to the supreme court of the State of South Carolina. Transcript of record. Filed.

(Indorsement on cover:) No. 397. The State, ex-rel. James Robb and Charles T. Lowndes, trustees, plaintiffs in error, vs. William Gurney, county treasur er of Charleston County. So. Carolina sup. court. Filed 22 November, 1871.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

THE STATE, EX RELATIONE JAMES ROBB, and CHARLES T. LOWNDES, Trustees, Plaintiffs in Error,
v.
WILLIAM GURNEY, County Treasurer of Charleston County.
No. 162.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

Brief of Plaintiffs in Error.

STATEMENT.

The facts of this case are precisely similar to the facts in the case of The State, Ex Relatione I. O. Wagner, Plaintiff in Error, *v.* John R. Stoll, County Treasurer of Charleston county, No. 163, of the docket of this Court for the the present term, except that the bills of the Bank of the State of South Carolina, tendered in this case for taxes, were issued prior to the 20th of December, 1860, the date of the ordinance of secession.

The same questions of law arise in both cases, and as these cases will be heard together, reference is made to the brief in No. 163.

A. G. MAGRATH,
W. W. BOYCE,
Counsel for Plaintiffs in Error.

Supreme Court of the United States.

DECEMBER TERM, 1872.

THE STATE, *ex relatione* T. D. WAGNER,
Plaintiff in Error
v.
JOHN R. STOLL, *County Treasurer*,
Defendant in Error.
} No. 163.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

BRIEF OF PLAINTIFF IN ERROR.

Statement.

The plaintiff in error is the relator in the State court, and tendered to the defendant in error, the officer of the State of South Carolina whose duty it is by law to collect and receive taxes levied by and to be paid to the State, bills of the bank known as "The President and Directors of the Bank of the State of South Carolina," in payment of taxes due by him to the State.

The county treasurer refused to receive the bills so tendered in payment of taxes. And the plaintiff in error filed in the court of common pleas for Charleston county, in the said State, a petition, in which he prayed that the court would by mandamus compel the county treasurer to receive such bills so tendered by him in payment of taxes due by him.

To this petition the defendant in error made his return.

The plaintiff in error traversed the return; and the case was heard upon the pleadings.

His honor Judge Platt accepted the return as sufficient answer to the petition, and refused the prayer.

The plantiff in error, relator in the State court, appealed from the dicision of Judge Platt, and the cause came on before the supreme court of the State.

The supreme court held the case under advisement, until certain issues involved could be tried. Under the order of the court, the case was remanded to the circuit court, for the purpose of having certain questions of fact tried and decided in the circuit court.

In the circuit court, to which the case had been remanded, the presiding judge submitted to the jury two issues: 1. Are the bills tendered by the relator the bills of the President and Directors of the Bank of the State of South Carolina? 2. Were these bills issued in aid of any insurrection or rebellion against the United States, and in order to furnish means for resisting the arms of the United States in suppressing said insurrection and rebellion?

At the trial the jury, upon both issues, found for the relator.

The case then came before the supreme court, with the statement of the judge who tried the case at the circuit, as to the result of the issues submitted to the jury.

The supreme court dismissed the appeal, and affirmed the order of the circuit judge.

The charter of the Bank gave to it corporate existence, under the name and style of "The President and Directors of the Bank of the State of South Carolina," and was so enacted in 1812.

The preamble sets forth that "it is deemed expedient and beneficial to the State and the citizens thereof to establish a bank on the funds of the State, for the purpose of discounting paper and making loans for longer periods than has heretofore been customary, and on security different from what has hitherto been required."

The charter then declares that certain stocks, which are

designated, shall constitute and form the capital of the said bank, and shall be vested in the president and directors, who shall be appointed in a manner there provided, and then adds: "And the faith of the State is hereby pledged for the support of the said bank, and to supply any deficiency in the funds specially pledged, and to make good all losses arising from such deficiency."

The 16th section of the charter provides, "that the bills or notes of the said corporation originally made payable, or which shall have become payable, on demand, in gold or silver coin, shall be receivable at the treasury of this State, either at Charleston or Columbia, and by all tax collectors and other public officers, in all payments for taxes or other moneys due to the State."

In 1833 this Bank was rechartered in the following terms: "That an act entitled an act to establish a bank in behalf of and for the benefit of the State," passed on the 19th December, in the year of our Lord 1812, and all other acts now of force relating to the conduct and operations of the said bank, be, and they are hereby, re-enacted and continued of force until the 1st May, 1856."

In 1852 the charter was again renewed in these terms: "That from and after the expiration of the present charter of the Bank of the State of South Carolina, the same shall be and is hereby extended until the 1st January, which will be in the year of our Lord 1871."

In 1857, in the act to raise supplies for the year commencing in October, 1857, it is provided, "That the comptroller general shall direct the tax collectors and treasurers to receive the taxes and other dues to the State only in notes of the Bank of the State, or of specie-paying banks of this State, or in coin of the United States."

In 1865 the Legislature declared, that the branches and agences of the Bank of the State of South Carolina shall be closed, and the principal bank in Charleston shall cease to be a bank of issue, and continue to act as a bank of deposit until further orders of the Legislature.

In 1868 the Legislature passed an act to close the opera-

tions of the Bank; and "that the 16th section of the act ratified the 19th December, 1812, entitled 'An act to establish a bank on behalf of and for the benefit of the State,' and all acts and parts of acts which render the bills of said corporation receivable in payment of taxes and all other dues to the State, be and the same are hereby repealed."

In 1843 the Legislature passed an act "prescribing the duties of certain offices in the collection of supplies, payment of salaries, and for other purposes," and the first section of this act provided, "that all taxes for the use and service of the State shall be paid in specie-paper medium, or the notes of specie-paying banks."

The question in the case was the nature and extent of the obligation of the contract, which, under the 16th section of the charter, arose between the State of South Carolina and the holder of bills of the Bank, to receive the same in payment of taxes due to the State.

The supreme court held that the act of 1843 was a repeal of the 16th section of the act of 1812, and as the bills tendered in payment of taxes were issued subsequently to 1843, the tax collector of the State was not bound to receive them.

Assignment of Errors.

1. That the decree of the supreme court of the State of South Carolina is error in law, and should be set aside and reversed—

Because the 16th section of the act of 1812 created a contract between the State of South Carolina and the holder of bills of the President and Directors of the Bank of the State of South Carolina, that such bills should be received for taxes due the State.

2. That, in the opinion of the court, filed with the decree of the court dismissing the motion to reverse the order of the circuit court, and which was ordered to be filed with the decree, as containing the grounds upon which it was founded, it was held that the act of 1843 was a repeal of

the 16th section of the act of 1812; and, therefore, that bills of the President and Directors of the Bank of the State of South Carolina issued after that time were not receivable for taxes. That was error in law, and should be set aside and reversed—

1. Because the act of 1843 contained no words of exclusion as to the continued operation of the 16th section of the act of 1812.

2. Because, in the petition for the mandamus, it was set forth that "no act of the Legislature of the State ever did repeal the 16th section of the act of 1812 in express terms, or by any proper or necessary implication. And that the bills of the Bank were receivable, and continued to be received, in payment of taxes until the year 1865, when the Legislature declared that the taxes therein levied shall be paid only in gold or silver coin, United States treasury notes, or notes declared to be a legal tender by the Government of the United States, or notes of the national banks, or the bills receivable of this State; and thus, from the year 1812 to the year 1865, the bills of the Bank of the State were always received in payment of taxes due to the State." And this fact, so charged in the petition, is not denied in the return made, and is therefore accepted as true; and, being true, is therefore inconsistent with the proposition that the act of 1843 was intended, accepted, or understood as repealing the 16th section of the act of 1812.

3. Because so late as 1865 the president of the Bank, in his report to the Legislature of the State, brings to the notice of that body that the bills of the Bank are receivable for taxes; and in view of this suggests legislation in regard to the taxes, "upon the ground of the public necessities."

4. Because none of the considerations which applied to other chartered banks were applicable to this Bank, of which the State was the sole stockholder, when the refusal of the State to receive its bills for taxes would lead to the demand of the holder for coin; and the faith of the State was pledged for the redemption of these bills.

5. Because the recharter of 1852 was the recharter of

what is called "the present charter," which was the recharter of 1833, which was the continuation of the charter of 1812. And in the recharter of 1852 no exception is made of the 16th section of the act of 1812.

6. Because not until 1865 did the Legislature, by the use of terms excluding the bills of this Bank by implication, repeal the operations of the 16th section in the future. And not until 1868 did the Legislature in express terms repeal the said 16th section. All of which is inconsistent with the idea that the same 16th section had been repealed in 1843.

7. "That in the same opinion of the supreme court of the State of South Carolina it was held, that the act of 1857, which required the comptroller general to direct the tax collectors and treasurer to receive the taxes and dues of the State only in notes of the Bank of the State, or of specie-paying banks of the State, or in the coin of the United States," a plain distinction is made between the bills of that Bank and other banks. And that the operations of the act of 1857 expired with the year is error in law.

Because there is no such limitation expressed in the act; that therefore it must continue operative until it is otherwise directed, unless it be intended that, until some other legislative direction was given, tax collectors were without control as to the modes in which payment of taxes could be made.

4. That, in the same opinion of the supreme court of the State of South Carolina, it was held that although courts do not favor repeal by implication; that when there appears "fair and necessary implication" as to "the intention of the Legislature" "that subsequent provisions are to abrogate those already existing;" and that "if there is a repugnancy created between two acts which cannot be reconciled, the latter is to be construed as repealing the former;" and that in the act of 1843 it was intended "to fix a rule which was thenceforth to govern in the matter to which it was to be applied." These are relied on as

sustaining the conclusion, that the act of 1843 repealed the 16th section of the act of 1812, and in such conclusion there was error in law.

Because, there was no "fair and necessary implication" as to the intention of the Legislature to abrogate by the act of 1843 provisions then existing as to this Bank; nor was there "repugnancy created between two acts which could not be reconciled;" nor was the act of 1843 intended to fix a rule in regard to the bills of this Bank; and that the conclusion as to the repeal of the 16th section of the act of 1812, under which the obligation of a contract was created with the holders of the bills of this Bank, could not be extinguished as to bills issued after that time, unless upon the clear and distinct expression of a purpose to that end. And that the act of 1857, which was to be a reaffirmance of the provision of the 16th section, continued and was of force, and bills issued since then were bills within the provision of the 16th section of the act of 1812. And so were all the bills issued by the Bank until 1865, when the term of exclusion (only) and the act of 1868, in express terms repealing the said 16th section, made bills, if issued after that period, not entitled to the protection of the said 16th section of the act of 1812.

Brief of the Argument.

The court below admitting, in obedience to the authority of Furman *v.* Nichol, (8 Wallace, p. 44,) that the 16th section of the act of 1812, chartering the Bank of the State of South Carolina, constituted a contract binding on the State to receive the bills of the Bank for taxes, justify the treasurer in refusing to receive said bills, on the ground that the above-mentioned act of 1843 repealed the said contract to receive said bills for taxes, contained in said 16th section, as to all bills of the Bank issued after 1843.

The only question then in the case here is, whether the court below erred in holding that the contract contained in the said 16th section was annulled as to bills of said Bank issued after the passage of the act of 1843, by reason

of the asserted repeal of said 16th section by said act of 1843?

It is to this single question of alleged repeal that argument will be addressed.

As preliminary, the following principles of law in regard to repeals by implication are submitted:

1. Repeals by implication are not favored.

Sedgwick's Statute and Const. Law, 125.
Foster's Case, 11 Coke, 56, 64.

There must be a positive repugnancy between the provisions of the new law and the old, to work a repeal by implication.

Wood *v.* United States, 16 Peters, 342.
McCool *v.* Smith, 1 Black, 459.
Aspden's Estate, 2 Wall., Jr., C. C., 368.
United States *v.* Taylor, Crabbe, 356.
Morlot *v.* Lawrence, 1 Blatchford C. C., 609.
United States *v.* Smith, 2 Blatchford C. C., 127.

Repeals by implication of revenue and collection laws are not favored.

United States *v.* Sixty-seven Packages, 17 How., 85.
United States *v.* Walker, 22 How., 299.

"An act of Parliament may be repealed by the express words of a subsequent statute, or by *necessary, irresistible* implication."

Dwarris on Statutes, p. 530.

"The question is whether the 66th section has been repealed. The question resolves itself into the more narrow inquiry, whether it has been repealed by necessary implication. We say by necessary implication, for it is not sufficient to establish that subsequent laws cover some, or even all, of the cases provided for it; for they may be merely affirmative, or cumulative, or auxiliary; but there

must be a *positive repugnancy* between the provisions of the new law and those of the old law."

Wood *v.* The United States, 16 Pet., 362.

See to the same effect,

Davies *v.* Fairbairn, 3 How., 643.

Seemingly repugnant statutes, so construed that, if possible, the latter may not repeal the former by implication.

6 Bacon's Abridgment, letter E, p. 228.

2. A general statute, without negative words, does not repeal a previous statute which is particular, even though the provisions of one be different from the other.

6 Coke's R., 19.
6 Coke's R., 63.
Dwarris, 532.
6 Watts & Serg. R., 209.
9 Harris, 43.
Dyer, 347.
15 East, 377.
24 Pick., 296.
5 Hill, 221.
Coté *v.* The United States, 3 Nott & Huntington, 70

Where it is manifestly the intention of the legislature that a subsequent act shall not control the provisions of a former act, the subsequent act shall not have such operation, even though the words, if taken strictly and grammatically, would repeal the former act."

6 Bacon's Abridgment, p. 248.

II. The act of 1843, relied on as repealing the 16th section of the act incorporating the Bank, is in the following words:

"That all taxes for the use and service of this State shall be paid in specie, paper medium, or the notes of the specie-paying banks of the State."

Statutes of South Carolina for 1843, p. 246.

It is submitted, this act of 1843 did not repeal the said 16th section.

(*a*) There is nothing in the said act of 1843 inconsistent with the idea of the taxes being paid in the bills of the Bank of the State of South Carolina, because the Bank of the State of South Carolina was in law and in fact a specie-paying bank at the time of the passage of the act of 1843. The terms "notes of the specie-paying banks of the State" actually included the notes of the Bank of the State of South Carolina.

In proof of this fact reference is had to a work published by order of the Legislature of South Carolina, entitled Bank Compilation, pp. 442, 443, 451, 471, 551, 602; *Ib.*, Introduction, p. xx.

(*b*) It will be observed that by the above act of 1843 "paper medium" was receivable for taxes.

"Paper medium" was a currency issued in 1785, to be loaned out on mortgage of land, and was made receivable for taxes. So jealous of the good faith of the State was the Legislature, that fearing some remnant of this currency might be in private hands, provision was made for its continued receipt for taxes.

This solicitude about the public faith in regard to "paper medium" goes far to negative the idea that there was intention to refuse acceptance of the bank notes of the Bank of the State of South Carolina for such refusal could not, in good faith, have been made other than prospective.

(*c*) Improbable that there was any intention to repeal the said 16th section by act of 1843, because of the close association between the State and the Bank.

The State was sole stockholder. (See Charter, Bank Compilation, p. 1.)

The faith of the State pledged for the support of the Bank, and to supply any deficiency in the funds pledged, and to make good all losses. (*Ib.*, p. 1.)

The depository of State's moneys. (*Ib.*, pp. 8, 9, 10, 17, 48, 52, 310.)

Fiscal agent to pay interest and principal of public debt,

make advances, &c. (*Ib.*, pp. 479, 603, 609; *Ib.*, Introduction, pp. xix, xx.)

Profits pledged to State's bond creditors. (*Ib.*, pp. 45, 86.)

Bank an accommodation to the people in loaning money. (*Ib.*, p. 471; Introduction, p. xix.)

(*e*) The taxes were paid from 1812 to 1865 in the bills of the Bank. This an admission in the pleadings.

Greathouse *v.* Dunlap, 3 McLean, 303.
Tolland *v.* Sprague, 12 Peters, 335.
Archer *v.* Morehead, Hemp., 184.

Contemporanea expositio est fortissima in leges.
6 Bacon's Abridgment, title Statute T. 5, p. 246.

(*f*) Section "16th" in act of 1812 being a contract, distinct notice should have been given of its rescission.

(*g*) Act of 1857. This act provides:

"The comptroller general shall direct the tax collectors and treasurers to receive the taxes and other dues of the State only in notes of the Bank of the State, or of specie-paying Banks of the State, or in coin of the United States." (12 Statutes of South Carolina, pp. 596, 597.)

This shows the Legislature never contemplated violating the contract contained in the "16th" section of the Bank charter.

The act of 1857 also repealed the act of 1843.

It is said to weaken the effect of the act of 1857, that was only a temporary act. We deny this; the residue of the act of 1857 may have been temporary, but this provision was not. This class of acts may contain permanent legislation. (United States *v.* Jarvis, Daveis C. C. R., 274.)

(*h*) If the act of 1843 repealed the 16th section, why the passage of the act of 1865, prohibiting the payment of taxes in the bills of the Bank.

(*i*) No words of negation in the act of 1843.

(*j*) No mention of the act of 1843 in an official publication, by authority, called "A Compilation of all the Acts, Resolutions, Reports, and other documents in relation to

the Bank of the State of South Carolina, affording full information concerning that institution," 1848.

(*k*) Renewal of the Bank's charter in 1852, without any words of exclusion of the 16th section of the charter.

(*l*) The act of 1843 did not prohibit payments into the State treasury of the bills, but left the 16th section of the Bank charter in full force on this subject.

(*m*) Admission of liability by the act of the Legislature of 1868, authorizing the bills of the Bank issued previous to December 20th, 1860, to be funded.

This act is in these words: "That all the bills issued by said corporation, (the Bank of the State of South Carolina,) prior to the 20th day of December, 1860, be funded." (Statutes of South Carolina for 1868, p. 23.)

Conclusion is drawn with great confidence that the act of 1843 did not repeal the 16th section of the Bank charter.

As the court below refused the mandamus on the single ground that the act of 1843 repealed the 16th section of the Bank charter, it is not thought appropriate to discuss any other question.

A. G. MAGRATH,
W. W. BOYCE,
Counsel.

In the Supreme Court of the United States,

DECEMBER TERM, 1872.

No. 162.

THE STATE *Ex Relatione* JAMES ROBB AND CHAS. T. LOWNDES, Trustees, Plaintiffs in Error,

vs.

WILLIAM GURNEY, County Treasurer of Charleston County.

No. 163.

THE STATE *Ex Relatione* THEODORE D. WAGNER, Plaintiff in Error,

vs.

JOHN R. STOLL, County Treasurer of Charleston County.

In Error to the Supreme Court of the State of South Carolina.

BRIEF FOR DEFENDANT IN ERROR.

In the Supreme Court of the United States,

December Term, 1872.

THE STATE *Ex Relatione* JAMES ROBB AND CHARLES T. LOWNDES, TRUSTEES, PLAINTIFFS IN ERROR,

vs.

WILLIAM GURNEY, COUNTY TREASURER OF CHARLESTON COUNTY.

No. 162.

THE STATE *Ex Relatione* T. D. WAGNER, PLAINTIFF IN ERROR,

vs.

JOHN R. STOLL, COUNTY TREASURER OF CHARLESTON COUNTY.

No. 163.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT.

In 1812 the Legislature of South Carolina passed an Act entitled "An Act to establish a Bank on behalf of, and for the benefit of the State."

Stat. at Large, Vol. 8, p. 24.

By the 1st Section of this Act it was enacted as follows: "And the faith of the State is hereby pledged for the support of the said Bank, and to supply any deficiency in the funds specifically pledged, and to make good all losses arising from such deficiency."

The sixteenth Section of the Act was as follows: "*And be it further enacted.* That the bills or notes of the said corporation, originally made payable, or which shall have become payable on demand, in gold or silver coin, shall be receivable at the Treasury of this State, either at Charleston or Columbia, andby all tax collectors and otherpublic officers, in all payments for taxes or other moneys due to the State."

In 1833, by an Act entitled "An Act to recharter the Bank of the State of South Carolina," it was enacted as follows:

"That an Act entitled 'An Act to establish a Bank on behalf of, and for the benefit of the State,' passed on the 19th day of December, 1812, and all other Acts now of force relating to the conduct and operations of the said Bank, be, and they are hereby, re-enacted and continued of force until the first day of May, 1856."

Stat. at Large, Vol. 8, p. 67.

In 1852, by an Act entitled "An Act to extend the charter of the Bank of the State of South Carolina," it was enacted as follows:

"That, from and after the expiration of the present charter of the Bank of the State of South Carolina, the same shall be, and is hereby, extended until the first day of January, which shall be in the year of our Lord 1871."

Stat. at Large, Vol. 12, p. 149.

The Bank went into operation in 1812, and became and

continued, to the year 1865, a bank of issue, discount and deposit.

In the annual Tax Acts from 1812 to 1842, inclusive,—each entitled "An Act to raise supplies for the year ———," it was the unvarying custom of the Legislature to make distinct enumeration of the kinds of funds in which the annual taxes might be paid.

These several Acts were, by their own terms, limited in operation to the fiscal year in which they were severally passed.

In 1843, the Legislature passed an Act entitled "An Act prescribing the duties of certain officers in the collection of supplies, the payment of salaries, and for other purposes."
Stat. at Large, Vol. 11, p. 246.

The first Section of the latter Act is in these words: "That all taxes for the use and service of this State shall be paid in specie, paper medium, or the notes of specie paying Banks of this State, and shall be ascertained and rated by the assessors and collectors throughout the State, respectively, according to the best of their knowledge and information."

That this Act was a general public Act there is no room for doubt.

Accordingly, from the year 1843 to the year 1857, the enumeration of the kinds of funds in which taxes should be payable was omitted from each of the annual Tax Acts, and tax Collectors were governed by the enumeration contained in the Act of 1843, as above quoted.

In 1857, the annual Tax Act, entitled "An Act to raise

supplies for the year commencing in October, 1857," contained the following Section:

"SEC. 8. The Comptroller General shall direct the Tax Collectors and Treasurers to receive the taxes and other dues of the State only in notes of the Bank of the State, or of specie paying banks of this State, or in coin of the United States."

Stat. at Large, Vol. 12, p. 595.

From the year 1857 to the year 1864, inclusive, the annual Tax Acts omit all enumeration of the kinds of funds in which taxes shall be payable.

In 1865, the annual Tax Act provides as follows:

"SEC. 5. That the taxes herein levied shall be paid only in gold and silver coin, United States Treasury notes, or notes declared to be a legal tender by the Government of the United States, or such Bills Receivable as may be issued under the authority of the present Legislature."

Stat. at Large, Vol. 13, p. 264.

In each year, subsequent to the year 1865, the Legislature made an express enumeration of the kinds of funds in which taxes might be paid, but in no case included the bills of the Bank of the State.

By the eleventh Section of the annual tax Act of 1865, the Bank of the State was required to close its branches and agencies, and cease to be a bank of issue, but to continue as a bank of deposit until the further action of the Legislature.

Stat. at Large, Vol. 13, p. 264.

In 1868, by an Act entitled "An Act to close the operations of the Bank of the State of South Carolina," it was enacted in Section 2, as follows:

"That all bills issued by said corporation prior to the twentieth day of December, 1860, be funded."

And in Section 4, of the same Act, it was enacted as follows:

"That the sixteenth Section of the Act, ratified the 19th day of December, 1812, entitled "An Act to establish a Bank in behalf of, and for the benefit of the State," and all Acts and parts of Acts, which render the bills of the said corporation receivable in payment of taxes and all other debts due the State, be, and the same are hereby, repealed."

The plaintiffs in error, in Case No. 162, relators in the State Courts, presented certain of the bills of the Bank of the State of South Carolina, issued prior to the year 1860, to the defendant in error, the County Treasurer of the County of Charleston, in payment of taxes in 1870, and upon the refusal of that officer to receive them for taxes, they proceeded by petition for a *mandamus* in the Court of Common Pleas of the State, to compel the County Treasurer to receive the said bills. The Court of Common Pleas denied the *mandamus*, and the relators appealed to the Supreme Court of the State, where the judgment of the Court of Common Pleas was affirmed.

The plaintiff in error, in Case No. 163, presented in like manner, certain of the bills of the same Bank, issued subsequent to December 20, 1860, the date of the so called secession of the State, and upon their rejection proceeded by *mandamus* against the County Treasurer in the Court of Common Pleas. The County Treasurer, in his return to the rule to show cause, in this case, averred as a matter of fact, that the

bills tendered by the plaintiff in error, for taxes, were issued subsequent to the pretended secession of the State, and in aid of the insurrection and rebellion of the State against the United States, and that the payment of such bills was prohibited by the fourteenth article of the Amendments of the Constitution of the United States, as well as by Section 16 of Article IX of the Constitution of the State of South Carolina.

The Court of Common Pleas, passing by this averment, denied the *mandamus* on other grounds, and the plaintiff in error appealed to the Supreme Court of the State. The Supreme Court, upon inspecting the record of the case, declared that the averment of the County Treasurer that the bills in question were issued in aid of the rebellion, raised an issue of fact which must be determined by a jury, and accordingly remanded the case to the Court of Common Pleas, with directions to submit this question of fact to a jury, and to certify the verdict thereon to the Supreme Court. The issue was submitted to a jury, who returned a verdict that the bills in question were not issued in aid of the rebellion. The Supreme Court thereupon heard the cause upon the questions of law involved, and affirmed the judgment of the Court of Common Pleas.

The two cases, from this point, become identical in character, the judgment of the Supreme Court of the State being put upon the same ground in each case.

BRIEF OF ARGUMENT.

The judgment of the Supreme Court of the State, in each of the cases, rests upon the single ground, that the Act of 1843, above quoted, operated as a repeal of the 16th Section

of the charter of the bank, and therefore, as to all bills issued after the passage of the Act of 1843, the contract of the State was to receive them if they were the bills "of specie-paying banks of this State."

The Supreme Court of the State concede that under the decision of this Court in *Furman* v. *Nichol*, 8 Wallace, 44, the 16th Section of the charter of the bank, so long as it stood unrepealed and unmodified, imposed an absolute obligation upon the State to receive the bills of the bank in payment of taxes; but they say that the present cases differ from the case of *Furman* v. *Nichol*, inasmuch as the question of the repeal of the 12th Section of the charter of the Bank of Tennessee, depended upon statutory provisions differing widely from those which are involved in the present cases. They, therefore, conclude that the decision in *Furman* v. *Nichol* does not decide the present cases, and they hold that the Act of 1843, being a repeal of the absolute obligation created by the 16th Section of the charter of the bank, the State was in no wise bound to receive the relators' bills, which, it is admitted, were issued after the passage of the Act of 1843.

The language of the 16th Section of the original charter of the Bank of South Carolina is identical with that of the 12th Section of the charter of the Bank of Tennessee, which was drawn in question in the case of *Furman* v. *Nichol*. It was decided, in that case, that the Section in question created a contract between the State of Tennessee and the billholders of the Bank of Tennessee, that the former would receive the bills of the bank for all taxes. It is implied in that decision, that the guaranty contained in the 12th Section of the charter, attached to all the notes of the bank issued while that Section remained in force, without regard to the convertibility of

the bills into specie. It must, therefore, have been considered that the words of the Section, "originally made payable, or which shall have become payable on demand, in gold or silver coin," had reference to the *form*, rather than to the *fact*, of convertibility into coin.

Hence, it can no longer be questioned that the guaranty of the 16th Section of the charter of the Bank of the State of South Carolina, so long as it remained in force, attached to all notes of the bank which were in *form* originally payable in coin, or payable on demand in coin, without regard to their actual convertibility into coin; in other words, the guaranty of receivability for taxes attached to the notes, whether the bank were a specie paying bank or not.

That such was the contract and legal obligation of the State, from 1812 to 1843, is not disputed by the State. In the latter year the Legislature passed the Act already quoted, of which the words, now under consideration, are as follows: "That all taxes, for the use and service of this State, shall be paid in specie, paper medium, or *the notes of specie-paying banks of this State.*"

Did this Act operate as a repeal of the original obligation assumed by the State in the 16th Section of the charter of the Bank?

There need be no dispute as to the general principles applicable to this case.

That the Act of 1843 is not an express repeal of the 16th Section, is admitted.

That repeals by implication are not favored by the Courts, is an undisputed proposition.

That in order to sustain a repeal by implication, there must

be such a positive repugnancy between the provisions of the former and the latter statute, that they cannot stand together, or be consistently reconciled, is a recognized rule of construction.

On the other hand, it is equally well settled, that a subsequent statute which is clearly repugnant to a prior one, necessarily repeals the former, although it does not do so in terms.

Sedgwick on Stat. and Const. Law, 124.

"Every affirmative statute is a repeal of a precedent affirmative statute, where its matter necessarily implies a negative."

Dwarris on Statutes, 530.

"It has been repeatedly declared that every statute is, by implication, a repeal of all prior statutes, so far as it is contrary and repugnant thereto, and that without any repealing clause."

Sedgwick on Stat. and Const. Law, 125.

Commonwealth vs. *Kimball*, 21 Pick, 373.

Rex vs. *Cator*, 4 Burr., 2026.

Repeal by implication is, therefore, a mode of repeal as well recognized and as effectual as repeal by express words.

When it is said that repeals by implication are not favored, no more is meant than that the Courts will not presume that the Legislature, without express words, intended to abrogate a former statute, unless the provisions of the two statutes are plainly inconsistent with each other.

Whenever such inconsistency or repugnancy clearly appears, the Courts will as readily give effect to a repeal by implication as to a repeal by express words.

The 16th Section of the charter of the bank, and the Act of 1843, are now to be compared, in order to discover whether they can be construed together, or whether there is a positive repugnancy between the two.

The 16th Section of the charter required the State to receive all notes of the bank which were *in form* payable in specie.

The Act of 1843 required that all taxes should be paid "in specie, paper medium, *or the notes of the specie-paying banks of this State.*"

What is the scope and effect of these latter words?

The Act of 1843 was designed to be a general and continuing law. In its enumeration of the funds in which taxes may be paid, it expressly qualifies and limits the kind of bank notes which may be received, by the phrase, "notes of *specie-paying* banks."

The interpretation of this phrase cannot be doubtful. A specie-paying bank is a bank which pays or redeems its bills in specie.

The requirement of the Act of 1843, therefore, admits only the notes of such banks as redeem their bills in specie.

The obligation imposed by the 16th Section of the charter was, on the contrary, an absolute contract to receive all bills of the bank, provided they were made payable *in form*, in specie, without regard to whether the bank was actually *specie-paying* or not.

How can these two statutes stand together?

No question is here made but that all notes of the bank issued prior to 1843, were covered and protected by the 16th Section of the charter, and were still receivable for taxes after the passage of the Act of 1843, by reason of the absolute

contract created by the 16th Section; but, with this exception, how can force and effect be given to the requirement of the Act of 1843 if we are still to regard the unqualified terms of the 16th Section as in force?

How can the purpose and intention, manifested by the words "notes of specie-paying banks," be reconciled with a co-existent purpose and intention to receive the bills of the Bank of the State whether that bank be specie-paying or not?

Here is a manifest, positive repugnancy between the new and old statute, and such repugnancy works a repeal of the old statute.

The case of *Daviess* vs. *Fairbairn*, 3 Howard, 643, is worthy of attention upon this point. The doctrine of that case is thus stated:

"Even if the subsequent statute be not repugnant, in all its provisions, to a prior one, yet, if the later statute was clearly intended to prescribe the only rule that should govern in the case provided for, it repeals the original Act."

In that case the Virginia Act of 1776, adopted by Kentucky, prescribed, *inter alia*, the mode in which a *feme covert* might make conveyance of lands. In 1785, another Act was passed upon the same subject, containing additional and different provisions as to conveyances by *femes covert*. It was contended that the Act of 1785 repealed that of 1776. The Court say: "In the Act of 1785 there is no express repeal of the Act of 1776; consequently that Act can only be repealed in so far as it may be repugnant to the subsequent Act. They are both affirmative statutes, and such parts of the prior statute as may be incorporated into the subsequent one, as consistent with it, must be considered in force. This

is the settled rule of construction, and applies with peculiar force to these statutes. Their object was to prescribe certain modes by which real property within the commonwealth should be conveyed by residents and non-residents, and, also, by *femes covert;* and, it must be admitted, that no other modes of conveyance, than those which are so prescribed, will be valid. * * * If the Act of 1785 be not repugnant, in all its provisions, to the Act of 1776, yet, if the former clearly intended to prescribe the only modes by which real estate should be conveyed, it repeals the prior Act."

Apply this decision to the present question. The Acts of 1812 and 1843 "are both affirmative statutes, and such parts of the Act of 1812 as may be incorporated into the Act of 1843, as consistent with it, must be considered in force. This is a settled rule of construction, and applies with peculiar force to these statutes. Their object was to prescribe certain funds in which taxes should be paid; and it must be admitted that no other funds, than those which are so prescribed, will be receivable."

Can the 16th Section of the Act of 1812 "be incorporated into the Act of 1843, as consistent with it?" If so, the Act of 1843, instead of restricting the notes receivable for taxes to those of "specie-paying banks," would be at once extended to embrace the bills of the Bank of the State, whether specie-paying or not. Does not such a construction manifestly subvert the intention of the Act of 1843?

Again, borrowing the language of this Court in *Daviess* vs. *Fairbairn*, "If the Act of 1843 be not repugnant, in all its provisions, to the Act of 1812, yet, if the former clearly intended to prescribe the only funds in which taxes should be paid, it repeals the prior one."

Is there room for doubt that the Act of 1843 intended to prescribe the only funds in which taxes should be paid? Its language is positive and exclusive: "All taxes for the use and service of this State shall be paid," &c.

The same doctrine is again affirmed and applied in the case of *The Dexter Plank Road Company* vs. *Allen*, 16 Barbour, 15.

From 1812 to 1843 the State had said: "All the notes issued by the Bank of the State shall be received for taxes." In 1843 it said: "Hereafter we will receive only the notes of such banks as shall redeem their notes in specie."

It is difficult to see how a clearer or more decided repugnancy between two statutes could exist. To construe the 16th Section of the Act of 1812 as still in force, would be to contravene and defeat the Act of 1843.

It is urged, however, that the Act of 1843 contains no words of negation. To this it is enough to reply that both the statutes in question are affirmative statutes, and if there be a positive repugnance between them, the later statute repeals the former, and the use of negative words is unnecessary and adds nothing to the effect of the later statute as a repeal of the former.

Perhaps the strongest view which can be urged in support of the plaintiffs in error's construction of the Act of 1843, is found in the doctrine that a later statute which is general

and affirmative does not abrogate a former which is particular. *Dwarris on Stat.*, 532.

The true meaning of this doctrine, it is apprehended, was correctly given by Sir O. Bridgman, as follows: "That the law will not allow the exposition of a statute to revoke or alter by construction of general words, any particular statute, where the words of the general statute may have their proper operation without it."

Lyn v. Wyn, Bridgman's Judgments, cited in *Dwarris on Stat.*, 532.

The doctrine, as thus stated, adds nothing to the requirements of the general doctrine of repeal by implication. If a general affirmative statute can have its proper effect and operation without interfering with the operation of an existing particular statute, both are allowed to stand. If there is repugnancy, here as elsewhere, the later statute must prevail.

Apply this doctrine to the present question. Consider the Act of 1843, as a general affirmative statute, and the 16th Section of the Charter, as a particular statute. Can the Act of 1843 have full operation while the 16th Section of the Charter remains in force? How can "*all* taxes," &c., "be paid in * * * the notes of *specie-paying* banks of the State," and at the same time a *part* of the taxes be paid in the notes of the Bank of the State, whether *specie-paying*, or not?

The brief of the plaintiffs in error presents the view that "there is nothing in the Act of 1843 inconsistent with the idea of the taxes being paid in the bills of the Bank of the

State of South Carolina, because the Bank was in law and in fact a specie-paying bank at the time of the passage of the Act of 1843."

What is meant by saying that the Bank was "in law" a specie-paying bank, is not quite clear. If it be intended to say that the laws of the State in 1843 required the Bank to redeem its notes in current coin, and imposed penalties for the failure to so redeem its notes, the statement is correct. *Stat. at Large*, Vol. 11, p. 100.

This, however, did not make it a specie-paying bank. It might at any moment disregard the law and become non-specie paying. The requirements and penalties of the law have no value in determining whether the bank was at that time a specie-paying bank or not.

The statement, however, that the Bank did, in fact, redeem its notes in specie, in 1843, is not denied; but it is not perceived how this fact weakens or affects the position that the Act of 1843 is repugnant to the 16th Section of the charter of the Bank.

The 16th Section, as has already been said, and as *Furman v. Nichol* fully decides, imposed on the State the obligation to receive the bills of that Bank for taxes, whether in point of fact the Bank at the time when the notes were tendered in payment of taxes, was redeeming her notes in specie or not. In other words, the 16th Section imposed an unqualified obligation on the State, provided the notes were issued by the Bank while the said Section continued in force. The Act of 1843, on the contrary, admitted in payment of taxes only the notes of specie-paying banks; that is, banks which in point of fact redeemed their notes in specie. This at once placed the notes of the Bank of the State, as to all subse-

quent issues, on the same footing with the notes of other banks of the State, and cut off the pre-existing peculiar privilege of that Bank. But how, it is asked, does it negative the idea of a repeal of the 16th Section, to show that under the Act of 1843 the bills of the Bank of the State were still receivable for taxes? The purpose of the Act of 1843 was not to absolutely exclude the bills of the Bank of the State, but it was to remove and determine the hitherto absolute obligation imposed by the 16th Section of the charter of that Bank. While the Bank of the State redeemed her notes in specie, they were still, under the Act of 1843, receivable for taxes, *but not otherwise.*

The fact, therefore, that the Bank of the State was, in 1843, in fact a specie-paying bank, has no significance as refuting the idea that the Act of 1843 was a repeal of the 16th Section of the Charter.

The plaintiffs in error further urge that it is "improbable that there was any intention to repeal the 16th Section of the Charter by the Act of 1843, because of the close association between the State and the Bank."

The argument of antecedent improbability is one to be resorted to only in cases where the meaning of a statute is doubtful or its language obscure.

"The tendency of all our modern decisions is to the effect *that the intention of the Legislature is to be found in the Statute itself,* and that there only the Judges are to look for the mischiefs meant to be obviated, and the remedy meant to be provided."

Sedgwick on Stat. and Const. Law, 243.

It is too much to claim for the argument of antecedent improbability that it shall have weight in weakening or overcoming the force of plain language; but if such an argument has any place in determining the present question, it is difficult to discover the alleged improbability. The fact of the close association of the State and the bank would seem to suggest the great probability that the State would, as the owner and controller of this bank, take such measures as would ensure that the bank should always be a specie-paying bank, rather than that she would consent to receive the depreciated and irredeemable issues of this bank, while rejecting the equally valuable issues of other banks.

The State had already, in 1840, as has been shown, passed a stringent Act, applicable to every bank in the State, the Bank of the State equally with other banks, and intended to effectually guard against the mischiefs of a suspension of specie payments by any of her banks.

Stat. at Large, Vol. 11, p. 100.

The real, inherent improbability would, therefore, seem to be that the State now intended in the Act of 1843, to permit the Bank of the State to practically escape from all existing penalties, and continue to float her irredeemable circulation by continuing to have it received for taxes.

Especially does such an intention become to the last degree improbable when the plain and ordinary interpretation of the language of the Act of 1843, certainly excludes the bills of the Bank of the State, unless that bank be a specie-paying bank, and when it is further considered how easy and natural it would have been, if the Legislature had intended to make so important an exception in a general and permanent Act, to have inserted a clause or phrase excepting the issues of that bank.

The words of the famous resolves of the Barons of the Exchequer seem to be a pertinent reply to such suggestions: "The office of all Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief and *pro privato commodo*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act, *pro bono publico*."

Heydon's Case, 3 Rep., 7.

The plaintiffs in error further contend that it is a fact admitted in the pleadings, that taxes were paid in the bills of the Bank of the State from 1812 to 1865.

In the first place, it is denied that the pleadings contain such an admission. The plaintiffs in error did indeed aver in their petitions in the State Court that such was the fact, but the averment, like many other averments in those petitions, was not a material averment, and hence the failure of the defendant in error to traverse that averment, is not an admission of its truth. This rule of pleading is clearly stated in one of the cases upon the brief of the plaintiffs in error, a case which seems to be in direct contradiction of the proposition which it is cited to maintain,—the case of *Toland* vs. *Sprague*, 12 Peters, 335.

In noticing a similar claim in that case the Court say: "It is said that the plaintiff having averred in his replication that there was no account stated or settled between him and the defendant, and the defendant not having traversed that averment in his rejoinder, the matter contained in that averment is admitted. It is a rule in pleading, that where in the

pleading of one party there is a material averment, which is traversable, but which is not traversed by the other party, it is admitted. We think the rule does not apply in this case, because the negative averment in the replication was not a necessary part of the plaintiff's replication. Inasmuch, then, as the replication without that averment would be sufficient, we do not consider it as one of those material averments, the omission to traverse which is an admission of its truth, within the rule before stated."

In the present case, the averment in the plaintiff's petition that the bills of the bank had been received for taxes from 1812 to 1865, was in no sense material to the case of the plaintiff, or to the legal sufficiency of his pleading. The fact, if proved, might indeed strengthen his case, but its absence, or its falsity, would not, of itself, defeat his claim. The failure, therefore, to traverse it, is not an admission of its truth.

"If an allegation in the opposite pleading be altogether immaterial, it cannot be traversed; otherwise the object of pleading, viz: the bringing the parties to an issue upon a matter or point decisive of the merits, would be defeated. And upon this ground, mere matter of aggravation, not going to the cause of action, or mere inducement or explanatory matter not in itself essential to or the substance of the case, should not be traversed."

1 *Chitty on Pl.*, 612.

The averment in question was not a material averment, and should not have been traversed. It cannot, therefore, be taken by this Court as true, either by admission or by proof.

The State, however, does not seek to rest these cases upon the technical exclusion of any fact. It is a fact, though not established by the pleadings, that the bills of the Bank of the State were received for taxes from 1812 to 1865.

What is the real significance of that fact? Is the fact that the State continued to receive those bills for taxes sufficient to override the effect of plain language, and to impose or continue an obligation which otherwise would not have been imposed or continued? No matter how long-continued the practice may have been, it was a gratuity, an indulgence, which could never ripen into a right, on the one hand, or harden into an obligation, on the other.

The plaintiffs in error further claim that the Act of 1857, already quoted, repealed the Act of 1843.

The Act of 1857 directed tax collectors to receive the taxes "only in notes of the Bank of the State, or of specie-paying banks of the State, or in coin of the United States."

If, as the plaintiffs in error maintain, this Act repealed the Act of 1843, thus restoring the bills of the Bank of the State to their former privileges, it follows that the Act of 1843 must have excluded the bills of that bank. Under this view, the issues of the Bank of the State, from 1843 to 1857, must have been without the guaranty of the 16th Section, and it would be incumbent on the plaintiffs in error to show that the bills which they now tender were issued subsequently to the Act of 1857,—a fact which, as to Case No. 162, at least, nowhere appears.

It is also claimed by the plaintiffs in error that the Section now quoted from the Act of 1857 was a permanent provision of law, continuing in force until 1865. But why, it might be asked, if the Act of 1843 did not affect the 16th Section of the Charter of the Bank, and if, in 1857, the said 16th Section still bound the State to receive all the bills of the Bank of the State for taxes, as the plaintiffs in error have hitherto contended, did the Legislature find it necessary, as the plaintiffs in error now insist, to repeal the Act of 1843, by the Act of 1857, and especially enumerate and include the said bills among the funds receivable for taxes?

But, however fatal or inconsistent the position of the plaintiffs in error in respect to the Act of 1857, may be, when confronted by their former positions in this argument, it is submitted that the scope, effect and intent of the Act of 1857 are correctly set forth in the opinion of the Supreme Court of the State, in deciding the present cases, as well as in the opinion of the former Court of Errors of South Carolina, in 1867.

Graniteville Manufacturing Company vs. *Roper*, 15 Rich. L., 153.

Wagner vs. *Stoll*, 2 Rich., N. S., 558.

The Act of 1857 is entitled "An Act to raise supplies for the year commencing in October, 1857," and is, in all respects, similar to the other annual Supply or Tax Acts, for the last sixty years.

In the case of the *Graniteville Manufacturing Company* vs. *Roper*, the Court of Errors say: "The public expenses of each year are a charge against the annual income; and, as the Act of 1866 and all Acts to raise supplies are annual, and their operation expires with the year, the tax-payer and collector are equally bound by their provisions."

In *Wagner* vs. *Stoll*, the Supreme Court say: "The Legislature had, from time to time, in the Acts passed annually to raise supplies for the current fiscal year, prescribed the medium in which taxes for such year should be paid. The Act of 1843 was a general one, and intended to be permanent in its operation, subject to any exception which the General Assembly might make for any particular year. * * * * * . The Act to raise supplies for 1857, required "that the Comptroller General shall direct the Tax Collectors and Treasurers to receive the taxes and other dues of the State only in notes of the Bank of the State, or of specie-paying banks of this State, or in coin of the United States." This discrimination was only for the year to which it expressly related, for "the Acts to raise supplies," as was said in the Graniteville case, "are annual, and their operation expires with the year." The Act of 1843, which must be regarded as a general one, became operative, and so continued until, by the express direction of the Legislature, suspended in its application to the taxes of any succeeding year."

An examination of the whole series of annual Supply Acts will show that in no instance were the provisions of those Acts treated as permanent provisions. With each year the separate features and provisions of those Acts are sedulously repeated and re-enacted. It seems too clear for extended argument, that the Act of 1857 was strictly an annual Act, and expired with that year, and that its effect was simply to suspend the general Act of 1843, so far as it differed from that Act, during that fiscal year, and that at its expiration the Act of 1843 resumed its force and operation, until the year 1865 when the annual supply Act expressly excluded all bills of all the banks of the State.

The attention of the Court has already been drawn to the Act of 1868, entitled "An Act to close the operations of the Bank of the State of South Carolina," which provided for funding the bills of the Bank issued prior to December 20, 1860, and also expressly repealed the 16th Section of the Act of 1812.

The plaintiffs in error maintain, with respect to the Act of 1868, that the funding of the bills of the Bank issued prior to the attempted secession of the State, and the express repeal of the 16th Section, are strong arguments to show that the Legislature regarded the State as still legally bound to receive the bills of the Bank for taxes.

To properly estimate the value of this argument it is necessary to examine the Act of 1868.

It is entitled "An Act to close the operations of the Bank of the State of South Carolina."

The first Section provided that the Governor, on behalf of State, shall take possession for the use of the State, of all the property and assets of the Bank of whatsoever kind, and to deposit them or their proceeds, when sold, in the Treasury of the State.

The second Section directed the funding of the bills of the Bank issued prior to December 20, 1860, in twenty-year bonds of the State.

The scheme of the Act is obvious at a glance,—the State proposed to avail herself of the funds of the Bank for her own immediate use, and in consideration of her obtaining those funds she undertook to give her bonds for the outstanding ante-war issues of the Bank.

There could have been no question but that the assets of the Bank were legally and primarily liable for the redemption of the notes of the Bank. Nor could the State have imagined

that she could appropriate those funds to her own use except by providing at the same time for the payment of the outstanding notes of the Bank. The Act was passed at a time when the Treasury of the State was absolutely empty, and when the sources of revenue for the State were wholly problematical.

Besides this, the State in 1812, had, as has been seen, expressly pledged her faith for the support of the Bank, and this was understood to impose on the State the duty of providing for the redemption of the obligations of the Bank.

When, therefore, the State determined to appropriate to herself the assets of the Bank, she necessarily made provision not only for redeeming the general pledge of her faith as expressed in the charter of 1812, but for immediately redeeming the unpaid notes of the Bank issued prior to December, 1860.

But this action of the State is now referred to, by the plaintiffs in error, as proof of the acknowledgment by the State of *her liability to receive the bills of the Bank in payment of taxes.*

The Act of 1868, when properly considered, warrants no such inference; but is plainly an admission that the State was bound by the pledge of her faith in 1812, which still stood unrepealed, and especially by her proposed taking of the funds applicable to the redemption of the notes of the Bank, to make provision for the payment of the issues of the Bank made before the attempted secession of the State; but it is confidently submitted that the Act of 1868 cannot be construed to admit, in any manner, the liability of the State to receive the bills of the Bank in payment of taxes.

At that time also the Court of Errors had rendered its decision, already referred to, (15 *Rich. L.*, 138,) holding that the State was not bound to receive the bills of the Bank for taxes. With that decision still in force it seems impossible to believe that the Legislature intended to acknowledge its liability to receive those bills for taxes.

Under the Act of 1868, the State issued her bonds in redemption of the bills of the Bank to the extent of over twelve hundred thousand dollars, comprising about twenty-four twenty-fifths of the entire amount outstanding at that time, of the ante-war issues. The holders of a certain class of State bonds resisted the attempt of the State to take the assets of the Bank, claiming that those assets were specifically pledged to secure their bonds, and the Supreme Court of the State sustained the claim, and refused a mandamus to compel the officers of the Bank to transfer the assets to the Treasury of the State. The assets of the Bank remain, therefore, undiminished, for the redemption of all the outstanding liabilities of the Bank, and the creditors are still further secured by the pledge of the faith of the State contained in the Act of 1812.

The Act of 1868 contains, in its fourth Section, an express repeal of the 16th Section of the Act of 1812, and it has been urged that this express repeal in 1868 negatives the claim of an earlier repeal by the Act of 1843.

The Act of 1868 was designed to absolutely close the operations of the Bank. As we have heretofore shown, the Act of 1865 discontinued the operations of the Bank as a bank of issue and discount, and continued it only as a bank

of deposit for the funds of the State. This function of the bank was discontinued by the third Section of the Act of 1868, leaving it no active powers or duties whatever. It certainly is not to be imagined that the Legislature understood that by a repeal in 1868 of the 16th Section of the Charter, she could defeat or diminish rights which had already accrued under the said 16th Section. She had already set up the repealing Act of 1843 as her defence against the receipt of the bills for taxes, and her Court of Errors had sustained the defence, but expressly held that the Act of 1843 could not operate except upon the subsequent issues, as had previously been held by this Court in *Woodruff* vs. *Trapnall*, 10 Howard, 290.

If, therefore, the Legislature did not, as the plaintiffs in error contend, deem the Act of 1843 a repeal of the 16th Section, how can they be supposed to have thought it within their power to have repealed that Section as to issues made before the repealing Act?

To impute to the Legislature the design, by the repealing Section of the Act of 1868, of relieving herself from any liability incurred prior to 1868, is to impute a design to do that which this Court, and her own Courts, in a case involving that precise question, had declared she could not do.

The Legislature of 1868 must have known that if the Act of 1843 did not repeal the 16th Section of the charter, the attempt to repeal it in 1868 and thus affect the liability of the State while that Section remained in force, would be vain and nugatory.

There is, however, an explanation of the repealing Section in the Act of 1868 which sufficiently accounts for its enactment.

It was inserted out of abundant caution. The State had asserted that the Act of 1843 was a repeal of the 16th Section of the charter, and her Courts had sustained her; but, now, in order to completely cut off all possible assertion of *future* liabilities of the State arising from the 16th Section, the 4th Section, expressly repealing the 16th Section of the Act of 1812, was inserted in the Act of 1868. It was inserted, not as a token or confession of distrust of the efficacy of the repeal by the Act of 1843, but in order, for the future, to avoid the possibility of the assertion of any claim of new liabilities arising from the absence of an *express* repeal of the 16th Section.

The re-chartering of the Bank of the State by the Act of 1852, without any words of exclusion of the 16th Section of the charter, has been pointed to in the brief of the plaintiffs in error, as an express re-enactment of that Section.

If, however, the Act of 1843 operated to repeal the 16th Section of the charter, that Section was not in legal existence and formed no part of the charter of the Bank in 1852. The words of that Act—"the *present charter* of the Bank," &c.,—could not, therefore, have included the 16th Section of the Act of 1812, and express words of exclusion of that Section would have been needless and unnatural.

It is believed, by the defendant in error, that this Court will reach its decision of the present cases by a consideration of the proper force and effect to be given to the Act of 1843 as affecting the 16th Section of the Act of 1812; and further,

that that decision will be determined by the proper interpretation and construction of the language of those Acts, rather than by a resort to the extraneous aids which are so largely relied on by the plaintiffs in error.

It has been the object of this argument to show that the Supreme Court of the State did not err in deciding, *first*, that the decision of this Court in *Furman* vs. *Nichol*, was not a decision of these cases, and *second*, that the Act of 1843 was a repeal of the 16th Section of the Act of 1812.

An examination of the case of *Furman* vs. *Nichol*, will serve to throw into strong contrast the distinction upon the point now at issue, between that case and the present cases, and by showing what does *not* amount to a repeal, will help to determine what *does* work that result.

In comparing that case with the present cases, it will be noted that the words of the 12th Section of the Act of Tennessee, and the 16th Section of the Act of South Carolina are altogether identical.

In the Tennessee case, the words relied on as repealing the 12th Section of the charter are as follows: "The collector shall receive, in discharge of public taxes and other dues to the State, besides the constitutional and lawful currency of the United States. 1st. *Such bank notes as are current at par in this State.*"

In the South Carolina case, the words relied on as repealing the 16th Section of the charter are as follows: "That all taxes for the use and service of this State shall be paid in specie, paper medium, or the notes of specie paying banks of this State."

It is to be observed that the language in the latter case is far stronger than in the former case. In the one case, "the

collector shall receive;" in the other, "all taxes shall be paid." The former words are, at most, feebly exclusive; the latter are plainly and emphatically so, and are precisely equivalent in meaning and effect to the words, "No taxes shall be paid except in specie," &c. If the former words, standing alone, could not work a repeal, the latter words might well be held to produce that result.

But the words now quoted from the Tennessee Code did not stand alone; the same Code contained a Section of *express* repeal, thus: "All public or general Acts, &c., and all public and special Acts, *the subject whereof are revised in this Code*, are hereby *repealed*."

It was a necessary conclusion in that case, that the matter of repeals was exhausted by this Section of *express* repeal, and when it appeared, as in that case it did appear, that the subject of the charter of the Bank of Tennessee was not revised in the Code, it resulted that that charter was not repealed.

But this was not all that saved the Tennessee charter from repeal. Another Section of the same Code expressly saved that charter from repeal, thus: "Local, special and private Acts, *and Acts of incorporation* heretofore passed, are *not* repealed, unless it be *herein so expressed*."

Thus, negatively and affirmatively, by the omission from the repealing Section, and by the inclusion in the saving Section, the idea of a repeal of the 12th Section of the Tennessee charter was undeniably excluded.

Contrast all this with the entire absence in the present case of any words which abate or qualify the full force of the words of the Act of 1843. In the language of the Supreme Court of the State, "The words employed to denote the purpose of the State were not only decisive but imperative." It

may be added, with equal truth, that the words in question were exclusive, and in meaning and effect equivalent to negative words.

So far, therefore, is the case of *Furman* vs. *Nichol* from covering by its decision the present cases, that it seems, upon an examination of the grounds upon which this portion of the decision rests, to warrant a confident belief that this Court will be constrained to reach an opposite conclusion in the present cases.

D. H. CHAMBERLAIN,
Counsel.

In the Supreme Court of the United States.

No. 162. THE STATE EX RELATIONE,

JAMES ROBB AND C. T. LOWNDES,

vs.

WILLIAM GURNEY, COUNTY TREASURER.

No. 163. THE STATE EX RELATIONE

THEODORE D. WAGNER,

vs.

JOHN R. STALL, COUNTY TREASURER.

Argument of Mr. Magrath, for Plaintiffs in Error.

In 1812, the Legislature of the State of South Carolina passed an act to establish a Bank on behalf of and for the benefit of the State. The 16th Section provided "that the bills or notes of the said corporation originally made payable, or which shall have become payable on demand in gold or silver coin, shall be receivable at the Treasury of the State, either at Charleston or Columbia, and by all tax collectors and other public officers, in all payments for taxes and other moneys due to the State." 8 Stat. 24.

In the first of these cases, the bills tendered were issued by the President and Directors of the Bank of the State of South Carolina, prior to December, 1860.

In the second of these cases, the bills of the same Bank were issued in 1861 and 1862.

It is seen in the record that the Supreme Court of the State directed an issue to be tried by the Circuit, to determine two questions: 1st. Whether the bills tendered were the bills of the

Bank ; 2d. Whether they had been issued in aid of any insurrection or rebellion against the United States, and in order to furnish means for resisting the arms of the United States, in suppressing said insurrection and rebellion ?

The verdict in the issues so made decided the first of these questions affirmatively, and the second in the negative. (R. No. 163, p. 15).

Upon the rendition of the verdict of the jury, the Supreme Court held that there was no difference between the old bills, as they were termed, that is, bills issued prior to December, 1860, and new bills, as those were called which had been issued subsequent to that time. The Supreme Court said "the facts set forth in the suggestion are to be taken as true, both in regard to the genuine character of the bills, and the legitimate purpose for which they were issued." 2 Rich. N. S. p. 555. (R. No. 163, p. 15).

To both of these classes of bills the objection was made, that by the Act of 1843, the 16th section of the Act of 1812, which was the charter of the Bank, had been repealed. And, thereupon, the Court held that the bills in these cases were not receivable for taxes due the State.

The liability of the State for the redemption of the old bills was recognized by the State in 1868, when it offered its bonds to the holders of those bills, and in that mode redeemed a large amount of them. The bills now before the Court, (R. No. 162) are a portion of those which the holders declined to exchange for bonds, insisting on their right to have them redeemed at their par value.

For the new bills, no proposal was made for the redemption of them. It was suggested that they were issued in aid of the rebellion, and, therefore, not binding. The issue directed by the Court was intended in the case of these bills to decide that question. And the Supreme Court, as has been stated, accepted that verdict as relieving these new bills from that objection. (R. No. 163, p. 15).

In the cases now before the Court, it will be seen that the only question to be considered is the repeal of the 16th section of the Act of 1812, by the 1st section of the Act of 1843.

This question has been twice before the Supreme Court of the

State—in the Graniteville Co., *vs.* Roper, 15 Rich. R. 138; and Wagner *vs.* Stall, 2 Rich. N. S. 538.

In the first of these cases, the Court held that the bills were not receivable for taxes, because they had ceased to be convertible into gold and silver, and because the 16th section of the Act of 1812 was repealed by the Act of 1843. In that case, the Plaintiff took bonds under the Act of 1868, and the case was not heard in this Court.

After the judgment in the case just referred to, and before the cases now pending came before the Supreme Court of the State, the case of Furman *vs.* Nichol was decided in this Court. 8 Wall, 44. The judgment of this Court in that case so completely overruled the ground upon which the judgment of the Supreme Court of the State in 15 Rich. 138, had been rested; that when the cases now before this Court were before the Supreme Court of the State, the principal objection was no longer insisted upon; but the judgment of the Court was rested altogether on the repeal, by the Act of 1843, of the 16th section of the Act of 1812.

The Act of 1843 is, therefore, the Act to which reference must be principally given. It was an Act "prescribing the duties of certain officers in the collection of supplies, payment of salaries, and for other purposes." 11 Stat. 246.

The 1st section of this Act provided "that all taxes for the use and service of the State shall be paid in specie, paper medium, or the notes of specie-paying banks."

At this time, the Bank of the State of South Carolina was a specie-paying Bank. This Bank and the Bank of Charleston did not suspend specie payments, although all the other Banks in the city had done so.

It is curious, but it is nevertheless true, that it must have been assumed by the Supreme Court of the State in the case in 15 Rich. 138, and also in 2 Rich. N. S. 538, that in 1843 the Bank of the State had suspended specie payment. For, surely, on no other hypothesis can it be explained, that a direction to the tax collector to receive the bills of a specie-paying bank was to be accepted in the case of a bank which was paying specie, as a prohibition against the receipt of its bills.

But the Act of 1857, makes the meaning of the Legislature so

plain in regard to its intention in the Act of 1843, not to refer to the Bank of the State, that the statement is the argument.

In 1857, the Bank of the State did suspend specie-payment. The Act of 1843, without explanation, might be considered as applying to it. And in order that it should not, at that time, the Legislature specially declared that the bills of that Bank, although not redeemable in specie by the Bank, should be received for taxes. We see then, that on the first occasion when it could have been supposed that the Act of 1843 did include the Bank of the State, the State expressly declared otherwise. 12 Stat. 596.

If we look for a moment at the relation of the Bank to the State, the reason for the Act of 1857 is clear. In that Bank the State was the sole stockholder; its faith was pledged for the support of the Bank. To refuse its bills for taxes was only to compel the holder to demand specie for the bills. To require specie from such holder, was only to require that holder to demand and receive specie from the Bank; or, failing in this, to uproot the financial credit of a bank in whose credit and prosperity the State had found the greatest profit and advantage, and to require the State itself to redeem its pledge for the support of the said Bank.

In 1868, the Legislature of the State passed an Act "to close the operations of the Bank of the State of South Carolina." In the 2d section of the Act it was provided as follows :

"SECTION 2. That all bills issued by said corporation, prior to the 20th day of December, 1860, be funded; and, on the surrender and delivery of said bills to the Treasurer of the State, bonds of the State, payable within twenty years after date, with interest at six per centum per annum, payable semi-annually, at the agency of the State in the city of New York, shall be issued to the owner of said bills in payment and redemption of the amount of said bills, and interest thereupon from the time when such bills were presented for payment, at six per centum per annum." 14 Stat. 22.

Surely no stronger evidence can be given of the recognition by the State of its liability to make good the bills of this Bank.

The 4th section of the same Act, is in these words:

"SECTION 4. That the 16th section of the Act ratified the 19th

day of December, 1812, entitled 'An Act to establish a Bank on behalf of and for the benefit of the State,' and all Acts and parts of Acts which render the bills of said corporation receivable in payment of taxes and all other dues to the State, be, and the same are hereby, repealed." Id.

To understand the real force to be given to the proposition, that the Act of 1843 was intended to be a repeal of the Act of 1812, it is necessary to look at all the circumstances connected with the relations which existed between the State and the Bank of the State.

In the organization of the Bank, there are these distinctive features:

1. The Bank was created for the benefit of the State, and the State was its sole stockholder.

2. The capital of the Bank was made up of certain stocks and securities so appropriated by the State.

3. The State pledged its faith for the solvency of the Bank.

4. The Bank, in the emphatic language of Judge Johnson, "was born in a state of suspension;" referring to the period of its creation when all the Banks, in 1812, were in suspension. (The State *vs.* Bank South Carolina, 1 Spear, L. R. 484).

From the date of its charter in 1812, to the time when its operations were closed in 1865, this Bank was the financial agent of the State.

From the date of its charter to the time when it was closed in 1865, the bills of this Bank were receivable and received in payment of taxes.

It is so charged in the suggestion for the mandamus. (R. p. 5).

Not denied in the return, and is, therefore, a fact admitted.

The argument, therefore, of the repeal by the Act of 1843, is at once met by the fact that the State, without interruption, always did receive the bills of this Bank for taxes. In 1857, as has been shown, when this Bank had suspended specie payment, by a special enactment, the Legislature declared that the bills of this Bank should be received in payment of taxes.

When reference is made to the suspension of specie payment after 1857, it is of consequence for us to consider what is the legislation of the State upon that subject.

In 1840, when the banks of the State were in suspension, it was held by the Courts of the State that such suspension was cause of forfeiture of the charter. State *vs.* Bank of South Carolina, 1 Spears, R. 398.

In 1840, the State prescribed certain consequences which should follow, in every case, a suspension of specie payment. (11 Stat. 100).

In 1860, the State suspended various provisions in the Act of 1857 and 1858, the 2d section of the Act of 1840, and the 5th section of the Act of 1852. (13 Stat. 860).

In 1862 and 1863, this Act was extended to 1st January, 1864. (13 Stat. 168).

In December, 1863, this Act was extended to the end of the war and one year thereafter. (13 Stat. 190).

In the same Act it was declared, "that the provisions of this Act shall not be held to apply to any bank which, during the operation of the Act shall declare or pay a dividend to its stockholders, or shall sell or dispose of its gold or silver coin, except to the State or the Confederate States." (13 Stat. 190).

In December, 1864, this section was repealed. (13 Stat. 190).

This 2d section of the Act of 1840, (11 Stat. 101) provided, that in case of suspension, each bank so suspending shall pay to the State, at the expiration of every month during such suspension, five per centum per annum upon the amount of its notes in circulation at the commencement of the said month, and continue to pay at the same rate at the end of every month until the bank shall redeem its notes according to their legal obligations.

We see then, that in 1843, when the State, as is said, repealed the 16th section of the Act of 1812, because it declared that the bills of specie-paying banks only should be received for taxes, that the Bank of the State was then a specie-paying bank.

That in 1857, when the Bank was not a specie-paying bank, the Legislature expressly provided that its bills should be received for taxes.

That in 1860 and so on to 1865, when this Bank and other banks continued suspended, the Legislature, by the removal of the penalty provided in the 2d section of the Act of 1840, sanctioned the suspension; and, at length, in 1863, prohibited the disposition of gold or silver coin, except to the State or Confederate

States, under the penalty of enforcing the penalties which it had released.

When, therefore, it is urged that because of a suspension of specie payment, the State repealed the 16th section of the Act of 1812, we are immediately reminded of these considerations: 1st. That at the time of the passage of the Act of 1843, the Bank of the State had not suspended specie payment; and, therefore, the direction as to the receivability of the bills of specie-paying banks did not affect the bills of this Bank. 2d. That the earliest issue of the bills of this Bank occurred when all the banks were in a state of suspension. 3d. That in 1857, when this Bank had suspended specie payments, the Legislature of the State directed that its bills should be received in payment of taxes. 4th. That the Legislature of the State from 1860 to 1865, sustained, if it did not encourage, the Bank to continue in a state of suspension. 5th. That the declaration of the Legislature of its purpose not to allow the bills of the Bank of the State to be received for taxes, could not affect bills then issued; and to whatever bills it was applied, carried with it as a necessary consequence, a demand on the Bank for specie; and if that was refused, forcing the Bank, by execution, to redeem its bills, and if it failed to do so, calling upon the State to redeem these bills for which it had pledged its faith.

In 1861, the Legislature declared that the Treasurers of the State be instructed to receive in payment the bills and notes of all the banks of this State, unless, in the opinion of the Comptroller-General, it shall be unsafe to receive the bills of one or more of such banks, in which case he shall be authorized to issue instructions to the tax collectors to refuse the notes of such banks. (13 Stat. 840).

And in 1862–63, the Legislature provided that all taxes levied on property during the continuance of the war between the Confederate and the United States of America, may be paid in Confederate notes or other current funds. (13 Stat. 91).

In 1858 and 1859, no directions were given as to the manner in which taxes should be paid; the Act of 1857, as before stated, providing that this should be paid "only in notes of the Bank of the State, or of specie-paying banks of this State, or in coin of the United States." (12 Stat. 597).

In the opinion of the Supreme Court of the State, the Act of 1857 is said to have been intended only for that year. If this be so, of which however there cannot be found any reason derived from the rules for the construction of statutes, it cannot be denied that it clearly shows the intention of the Legislature not to include the bills of this Bank in the Act of 1843. For, if in 1857, when the Bank with all other banks in the city did suspend payment of its bills in specie, the Legislature, by special enactment, made the bills of this Bank alike receivable with bills of specie-paying banks and coin for taxes, what stronger evidence can be offered of the recognition by the State of that relation between it and this Bank, which would cause it in legislation concerning other banks and its own finances, to consider this Bank, as it was in fact, the financial agent of the State, and for the solvency of which the State was liable.

It is plain that the repeal of the 16th section of the Act of 1812, is only attempted by construction; in other words, the repeal is by implication.

It would be enough to show that while the doctrine of this Court, and of all courts, is to sustain such repeals only when it is perfectly clear; and that in all cases the courts do not favor such modes of repeal, for it is always setting aside an expressed intent, by something that is more or less doubtful; there are in this three considerations which exclude this conclusion of the repeal of the 16th section of the Act of 1812, because such repeal cannot be reconciled with good faith in the State.

In 1852, the charter of this Bank was renewed. (12 Stat. 150).

The 1st section of that Act is in these words: "from and after the expiration of the present charter of the Bank of the State of South Carolina, the same shall be and is hereby extended until the 1st January, which shall be in the year of our Lord 1871."

The 2d section declares that the Bank shall not subscribe for the capital stock of any railroad, unless by the permission of the Legislature.

The 3d section repeals the 5th section of the Act of 1812.

The 4th section prohibits the Bank from paying out the bills of any other bank except in settlement with other banks.

The 5th section provides the modes in which the profits of the Bank shall be invested; that is in the purchase of the debts of the State.

The 6th section prohibits the issue by any bank in the State of bills less than five dollars.

In this Act, in which the original charter is renewed, and in which are to be found the modifications which were to be parts of it, no reference is made to the 16th section of the Act of 1812.

Next, the Legislature of the State required that all Acts and parts of Acts in relation to the Bank of the State should be collected together and reported to the Legislature. Here, if anywhere, we should expect to find some reference to the Act of 1843. The Legislature, in 1840, directed the President of the Bank to have compiled and published in pamphlet form, all Acts and clauses of Acts, and all resolutions passed and adopted by the Legislature in relation to the said Bank and branches thereof; and that he do cause a sufficient number of copies to be placed on the tables of the members at the beginning of the next session. The collection was prepared. That edition being exhausted, the Legislature, in 1842, ordered a new edition. That was also exhausted, and the Legislature, in 1846, ordered another edition. In this collection there does not appear, anywhere, reference to the Act of 1843 as an Act relating to this Bank. (Bank Compilation).

Again, the withdrawal of a pledge like that found in the 16th section of the Act of 1812 cannot be considered as consistent with the pledge of the faith of the State, if made in a manner so equivocal as to delude.

In 1847, the Committee of the Legislature appointed to examine into the condition of the Bank declare that, "there is another point of view in which this institution seems peculiarly valuable to the commercial relations of the State at large. The State being the guaranty for its stability, there is scarcely a possibility of the failure of the Bank. * * * * * * When distrust is abroad, and deposits and specie withdrawn on every side from the private corporations, then the beneficent effect of an institution under the guaranty of the State is more peculiarly felt. At such times, it becomes the grand depository of all those funds which have thus been drawn from the private banks, and which would otherwise be drawn entirely from circulation and hoarded, and by this withdrawal would increase twofold the general suffering." (Bank Comp. 311).

Would such language be easily reconciled with the repeal, in 1843, of a pledge in the charter to receive the bills of this Bank for taxes and dues to the State?

But, in addition to this, it must be remembered that at the very time when the withdrawal of the pledge to receive the bills of this Bank for taxes is said to have been made by the Act of 1843, the credit of the Bank was high; the confidence of the State in it wholly unimpaired; and, as the fiscal agent of the State, according to the report of the President, in 1843, its profits were three millions six hundred and seventy-two thousand two hundred and ninety-one 43-100 ($3,672,291 43) dollars; the interest on its original capital at seven per cent. two millions two hundred and eight thousand nine hundred and ninety-three 48-100 ($2,208,993 48) dollars, and the difference showed an excess of profit over interest of one million four hundred and sixty-three thousand two hundred and ninety-seven 95-100 ($1,463,297 95) dollars. "This excess (said the President) is considerably more than the whole original capital of the Bank." (Bank Comp. 560).

Lastly, and what must seem conclusive, as to this argument of a repeal by the Act of 1843, of the 16th section of the Act of 1812, we have the report of the President of the Bank, in 1865, to the Legislature of the State, in which he brings to the notice of that body, that the bills of this Bank are receivable for taxes, and suggests legislation which will either tend to absorb the bills, or some other arrangement, "upon the ground of the public necessities." (Reports of 1865, p. 57).

In that report Mr. Furman says:

"In connection with this subject of State Revenue, it is proper to bring to your attention that the bills of the Bank of the State are receivable for taxes. If the taxes imposed at this session are paid in those bills, it is plain that the income of the State will not be available to meet its current expenditures. It may, therefore, be necessary either to direct that the taxes of this year shall only be paid in the currency of the United States, upon the ground of the public necessities, or to require that any tax-payer who offers to pay the tax to be this year imposed with the bills of the Bank of the State shall, at the same time, pay the taxes of the last year (which have not been generally collected) in the same medium. Such an annrangement would

either occasion the taxes to be paid in United States currency, or would so reduce the volume of Bank currency as to make the bills available to the State as a medium for payment. This would also enable the State to settle the advances made by the Bank, without incurring a new obligation." (Report of C. M. Furman, President of Bank of the State, for 1865).

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For Plaintiffs in Error.

Supreme Court of the United States.

DECEMBER TERM, 1872.

THE STATE *ex rel.* T. D. WAGNER,
Plaintiff in Error,

vs.

JOHN R. STOLL, County Treasurer.

No. 163.

SUPPLEMENTAL BRIEF.

As further reason for holding that the act of 1843 was not intended as a repeal of the 16th section of the charter of the Bank of the State of South Carolina, it is submitted—

1. That the provisions in the charters of certain of the private banks of the State, authorizing the bills and notes of such banks to be received in payment of taxes, was so modified in 1852, that the bills or notes of these banks were only so receivable for taxes while they were actually redeemable in specie. This modification of the charters of the private banks, contrasted with the act of 1857, expressly directing the bills of the Bank of the State of South Carolina to be received for taxes when it was in a state of suspension, goes far to show that the Legislature adhered to the contract contained in the 16th section of the bank charter, considered it operative, and discriminated between the private banks and this public bank.

As to the ~~Bank of the~~ State of South Carolina, its bills and notes made receivable for taxes by original charter of 1802.

Bank

8 Stats. at Large, p. 13.

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As to the ~~Bank of the~~ State of South Carolina, its bills and notes made receivable for taxes by original charter of 1802.

8 Stats. at Large, p. 13.

This provision continued in the renewal of the charter of the bank in 1822.

8 Stats. at Large, p. 39.

This provision continued in 1833.

8 Stats. at Large, p. 67.

Charter of this bank renewed and amended in 1853. By 6th section the bills and notes of the bank are made receivable for taxes "no longer than while the said bank shall promptly pay on demand gold and silver current coin for their notes."

Acts of the General Assembly for 1853, p. 244.

As to The Union Bank of South Carolina, chartered in 1810, by the 12th section its bills or notes made receivable for taxes.

8 Stats. at Large, p. 17.

Charter of "The Union Bank" renewed in 1828, and provision continued as to receipt of its bills for taxes.

8 Stats. at Large, p. 57.

Charter of this bank renewed in 1852, and provision that the bills and notes of the bank be received for taxes, modified so that they should only be receivable for taxes while in fact they were redeemable in specie.

Acts of General Assembly for 1852, p. 213.

The Planters and Mechanics' Bank chartered. Its bills and notes made receivable for taxes by charter of 1811. (Sec. 4, p. 23.)

8 Stats. at Large, p. 2.

This provision renewed in 1830 on recharter.

8 Stats. at Large, p. 57.

This provision modified in 1852, so that bills or notes of the bank only receivable while actually redeemable in specie. (Sec. 7.)

Acts of General Assembly for 1852, p. 213.

Bank of the State of South Carolina chartered in 1812.

8 Stats. at Large, p. 24.

16th section providing that the bills and notes receivable for taxes.

8 Stats. at Large, p. 30.

Charter of Bank of State of South Carolina renewed in 1833, and extended to 1856, without any modification of original charter prohibition to issue any bills under $1, and requiring all bills under $1 to be called in. Also repealing an act passed in 1816 establishing a branch of the bank at Georgetown.

8 Stats. at Large, p. 67.

As to act of 1857, (see Report of Comptroller General of South Carolina for 1857, p. 14; and Report of President of bank for 1857, p. 75.)

Charter of the Bank of the State of South Carolina renewed in 1852, and extended to 1871. In this act of renewal, after providing in the first section that "the present charter of the Bank of the State of South Carolina shall be and is hereby extended until the first day of January, 1871," it is further provided as follows:

SEC. 2. The bank not to have authority to subscribe to the stock of any railroad or other work of improvement within or without the limits of the State, unless by permission of the Legislature.

SEC. 3. That the 5th section of an "Act to establish a bank on behalf and for the benefit of the State" be and is repealed.

The 5th section thus repealed gave a priority to mortgages given to the bank to secure loans, which were treated as if recorded from their execution.

SEC. 4. Bank prohibited from paying out any bills but its own bills, except in settlement with other banks.

SEC. 5. Provision requiring the bank to purchase the stocks of the State, &c.

SEC. 6. Provision that no bill or note under $5 to be issued by this or any other bank in the State.

Stats. at Large, (1852,) p. 149.

2. It is submitted that the act of 1843, relied on as repealing the 16th section of the charter of the Bank of the State of South Carolina, was framed with express reference to the private banks of the State which had suspended specie payments.

By reference to "An act to amend an act to provide against the suspension of specie payments by the banks of this State," (11 Stats. at Large, 259,) passed in December, 1843, it appears from the recitals in said act that application had been made by two private banks, viz, the Bank of South Carolina and the State Bank, to be permitted to accept as parts of their charters the provisions of "An act to provide against the suspension of specie payments by the banks of that State," ratified December, 1840. (11 Stats. at Large, 100.)

The act of 1843, relied on as repealing the 16th section of the charter of the Bank of the State of South Carolina, was ratified on 19th of December, 1843, the same day as the "Act" above alluded to, "to amend an act to provide against the suspension of specie payments by the banks of this State."

It would seem, therefore, that these two acts were aimed exclusively at the private banks which had suspended specie payments.

The act of 1843, "To amend an act to provide against the suspension of specie payments by the banks of this State," above referred to, recites in its 3d and 4th sections that legal proceedings were pending on behalf of the State against certain of the private banks for suspending specie payments.

The act of 1840, entitled "An act to provide against the suspension of specie payments by the banks of this State," already referred to, in its 7th section instructs the Governor to institute legal proceedings to vacate charters of such banks as had suspended specie payments, unless they accepted the provisions of said act of 1840.

It further appears by a resolution of the House of Representatives of 1841, (Bank Compilation, p. 82,) that "The

Bank of the State," (of South Carolina,) and certain specially named private banks, are complimented for their action in regard to their co-operation with the State in "promoting those measures which have been deemed essential to the public welfare," in the matter of the suspension of specie payments.

It further appears that in 1838 it was resolved by the House of Representatives that the Bank of the State of South Carolina be "required to take such measures as they deemed proper to preserve at par the bills of any bank in the State." (Bank Compilation, p. 79.)

It appears that the Bank of South Carolina and the Bank of Charleston were the only banks in the State which did not suspend specie payments in 1839. (Bank Compilation, p. 443.) And that the bills of the Bank of the State of South Carolina, during the financial crisis of 1839, maintained the highest value. (Bank Compilation, p. 449.)

It appears from the above-recited facts that there was a general suspension of the banks in the State of South Carolina in 1839, the only banks not suspending being the Bank of the State of South Carolina and the Bank of Charleston.

It further appears that the Legislature was greatly impressed with the importance of maintaining specie payments, and that the Legislature was extremely dissatisfied with the conduct of such of the private banks as suspended specie payments, and legislated to cure the evil; that in this legislation the Bank of the State of South Carolina, acting under instructions of the Legislature, promoted the financial policy of the State, and was applauded by the Legislature for so doing.

It further appears that the private banks, refusing to come into the policy of the Legislature, evidenced by the act of 1840, were prosecuted by the State. (See State *v.* Bank South Carolina, 1 Speers R., 433.)

The controversy between the Legislature and the recusant private banks wound up in the triumph of the Legislature, and the two acts of 1843 above alluded to were

the fruits of the legislative victory over the rebellious banks.

It seems then a fair conclusion to draw, that the act of 1843, relied on as repealing the 16th section of the charter of the Bank of the State of South Carolina, was intended to operate exclusively on the private banks, then for the first time reduced to submission.

3. That general legislation was customarily enacted in the annual tax acts of the State of South Carolina.

See State *v.* Hodges, 14 Richardson, 272, note thereto by Judge Wardlaw.

See further, as to this point, in "Act to make appropriations for 1812," Bank Compilation, p. 9; Appropriation act of 1816, *ib.*, p. 13; appropriation act of 1819, *ib.*, p. 17; appropriation act of 1821, *ib.*, p. 19; appropriation act of 1826, *ib.*, p. 25; appropriation act of 1827, *ib.*, p. 29; appropriation act of 1836, *ib.*, p. 38; appropriation act of 1838, *ib.*, p. 47; appropriation act of 1842, *ib.*, p. 56; appropriation act of 1843, *ib.*, p. 62; appropriation acts of 1844, 1845, 1846, *ib.*, p. 63; appropriation act of 1847, *ib.*, p. 64.

See further as to this point in "An act to raise supplies," *ib.*, p. 11; "An act to raise supplies for the year 1820," *ib.*, p. 18; "Act to raise supplies for 1822," *ib.*, p. 21; "Act to raise supplies for 1823," *ib.*, p. 23; "Act to raise supplies for 1824," *ib.*, p. 24; "Act to raise supplies for 1826," *ib.*, p. 25; "Act to raise supplies for 1832," *ib.*, p. 36; "Act to raise supplies for 1840," *ib.*, p. 52.

A. G MAGRATH,
W. W. BOYCE,
Counsel for Plaintiff in Error.

Compendium, reporters
— to Bank of State of So. Carolina
New Series 5–39.—
2 Richardson

It was said by the Supreme Court of the State in Wagner *vs.* Stoll, at page 557, that "the design of the Act of 1843 was to qualify the obligation which rested on the State to accept under all circumstances, in payment of dues, not only the notes of the Bank of the State of South Carolina, *but of all such other banks as under their respective charters*, and various provisions of the Annual Supply Acts, had the right to demand that their bills should be so received."

In 1802, the State Bank was incorporated, and, in the 16th Section of the charter, it was enacted as follows: "*And be it further enacted*, That the bills or notes of the said corporation, originally made payable, or which shall have become payable on demand, in gold and silver coin, shall be receivable at the Treasury of this State, either at Charleston or Columbia; and by all Tax Collectors, and other public officers, in all payments for taxes, or other moneys due to the State."

Stat. at Large, Vol. 8, p. 6.

The charter of this Bank was renewed in 1822, "with all the privileges, powers, immunities, and benefits which it now enjoys."

Stat. at Large, Vol. 8, p. 39.

In 1810, the Union Bank of South Carolina was incorporated, and in the twelfth Section of the Act are the following words: "*And be it further enacted*, That the bills or notes of the said corporation, originally made payable, or which shall have become payable, on demand in gold or silver coin, shall be receivable at the Treasury of this State, either at Charleston or Columbia, and by all Tax Collectors and other public officers, in all payments for taxes or other moneys due to the State, during the term for which said company is hereby incorporated."

Stat. at Large, Vol. 8, p. 14.

With the exception of the last ten words, this Section is

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1873.

THE STATE Ex Relatione C. T. LOWNDES and JAMES ROBB, Trustees,

vs.

WILLIAM GURNEY, County Treasurer.

THE STATE Ex Relatione THEODORE D. WAGNER,

vs.

JOHN R. STOLL, County Treasurer.

BRIEF OF A. G. MAGRATH,

FOR PLAINTIFF IN ERROR.

Walker. Evans & Cogswell, Printers, Charleston, S. C.

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The first of these cases relates to the bills of the President and Directors of the Bank of the State of South Carolina, issued prior to December, 1860; the second case relates to bills of the same Bank issued subsequently.

When the second case was before the Supreme Court of the State of South Carolina, it was remanded to the Circuit Court, that certain issues made in the return, should be there heard and decided. These were, whether the bills in that case were the bills of the President and Directors of the Bank of the State of South Carolina; and whether these bills were issued in aid

of any insurrection or rebellion against the United States, and in order to furnish means for resisting the arms of the United States in suppressing said insurrection and rebellion?

To each question the verdict was given in favor of the relator. The Supreme Court of the State then held that "the facts therefore set forth in the suggestion are to be taken as true, both in regard to the genuine character of the bills and the legitimate purpose for which they were issued." (Wagner *vs.* Stoll, 2 So. Ca. Rep. 538.)

And the cases before the Supreme Court presented "the question of law, applicable to the facts." (Id. p. 555.)

That question of law is, whether the Act of the Legislature of 1843, repealed the 16th section of the Act of 1812, which is the charter of this bank?

What is the 16th section of the Act of 1812? What are the terms of the Act of 1843, which it is said repeal the 16th section of the Act of 1812?

The Act of 1812 established this bank, and was entitled "an Act to establish a bank on behalf of and for the benefit of the State." The capital of the bank consisted of certain stocks and securities which belonged to the State and were transferred to the bank as its capital; and in the strong language of the Act, "the faith of the State is hereby pledged for the support of the said bank, and to supply any deficiency in the funds specifically pledged and to make good all losses arising from such deficiency."

The 16th section of this Act provided, "that the bills or notes of the said corporation originally made payable, or which shall have become payable on demand in gold or silver, shall be receivable at the treasury of this State, either at Charleston or Columbia, and by all Tax Collectors and other public officers, in all payments for taxes or other moneys due the State."

(8 Stat. at Large, p. 24.)

The Act of 1843, by which it is said this section was repealed, is entitled "An Act prescribing the duties of certain officers in the collection of supplies, the payment of salaries, and for other purposes;" and these words in the 1st section of the Act, "that

all taxes for the use and service of this State shall be paid in specie, paper medium, or the notes of the specie paying banks of this State," are held as repealing the 16th section just cited (11 Stat. at Large, 246.)

We propose now to show that the Legislature did not, by the Act of 1843, repeal the 16th Section of the Act of 1812; and that these bills are receivable for taxes due to the State.

By the 16th section of the Act of 1812, the bills of this Bank were receivable—first, for taxes; second, for other moneys due the State.

The Act of 1843, if to it be given all the effect contended for by the defendants in error, repeals the receivability of these bills for taxes; but leaves the receivability of them for "other moneys due the State," still of force. The receivability of these bills was for more than "taxes:" this is plain from the terms "other money." The argument, therefore, for the repeal, concedes that for "other moneys due the State" the bills are receivable, while they are not so receivable for "taxes." In other words, that "for all moneys due the State," except for "taxes," these bills shall be receivable. The repeal then is only of a part of the 16th section. But more than this: the State had pledged its faith and credit to redeem the bills of this Bank if the Bank failed to do so. This obligation of the State is expressed in the plainest terms, in the several Acts of the Legislature, and in the declarations of the officers of the State.

We are called then to consider the reasonableness of a presumed repeal of so much of the charter of this Bank, as makes its bills receivable for taxes; while such bills are receivable for other dues to the State; and the State itself is bound to redeem these bills *in specie* if the Bank should fail to do so.

If the terms used in the Act of 1843 repeal the 16th section of the Act of 1812, it is useless to refer to the Act of 1843, as the expression of the Legislative will by which the 16th

section of the Act of 1812 is repealed; for the Legislature of the State in 1826, used precisely the same language in providing that taxes should be paid "*in specie, paper medium, or the notes of the specie paying banks of this State.*"

(9 Stat. at Large, 293.)

And again; in the Act of 1838, the same terms are used. In that Act, the taxes are to be paid "*in specie, paper medium, or the notes of the specie paying banks of this State.*"

(6 Statute at Large, 606.)

If, therefore, the terms used in the Act of 1843, repeal the 16th section of the Act of 1812, the same terms used in 1826 must have produced the same result; and the use again of the same terms in 1838 again produced also the same result. The argument, therefore, for the repeal in 1843, is equally good for the repeal in 1826.

No one has yet ventured to maintain this proposition. But how is the conclusion to be resisted, that the same words, relating to the same matter, must be construed in 1826 and in 1838, as in 1843?

It will not relieve the difficulty to say that the Acts of the Legislature in 1826 and 1838, were Acts for raising supplies; and said to be operative only for the year, (a matter to which reference will be made hereafter.) For if the Legislature had the power to control the 16th section of the Act of 1812, by a provision in the Act for raising supplies, it could do so by any other Act. If it could do so by any Act whatever, it could only be because the 16th section of the Act of 1812 did not by its terms, import a contract. But as such terms had been held to create a contract, no Act of the State could divest the rights of those who claimed according to the terms of that contract. (Furman *vs.* Nichols, 8 Wall. R., 44.)

In the charters of private Banks, will be found the same terms that are used in the 16th section of the Act of 1812. The application, therefore, of the terms used in the Acts of 1826, 1838 and 1843, to the Bank of the State of South Carolina,

should be the same, in this respect, as in the case of private incorporated Banks. But this cannot be, for these terms create a contract. The argument therefore would be resolved into this: that the State intended to legislate more adversely to its own Bank, and therefore to the interests of the State, than to other incorporated private banks of the State.

How, did the Legislature of the State act in regard to other banks in the State? Take the Planters' and Mechanics' Bank. It was chartered in 1810.

(8 Statute at Large, 22.)

That charter was amended in 1811, and the amended charter contained this enactment:

"The bills or notes of the Planters' and Mechanics' Bank, originally made payable or which shall have become payable on demand in gold or silver coin, shall be receivable at the Treasury of this State, either at Charleston or at Columbia, and by all tax collectors, and other public officers, in all payments for taxes or other moneys due to the State, *during the term for which the said Company is incorporated.*"

(8 Statute at Large, 23.)

Here is a contract between the State and the holders of the bills of the Planters' and Mechanics' Bank; and of force during the term for which the charter was given.

A contract so plainly created, that the Act of 1826 could not impair its obligation; nor could any other Act while that charter was of force.

The Planters' and Mechanics' Bank, (with the Union Bank,) was chartered again in 1830, and "permitted and authorized to exercise and enjoy all the privileges, rights, purposes, immunities and benefits which they now enjoy under their respective charters; or with which they are or have been invested respectively by any Act of the General Assembly of this State now in force; and shall also be subject respectively to all the restrictions imposed by any such Act of Assembly."

(8 Statute at Large, 57.)

The Act of 1838 could not affect this charter: and so renewed, it continued until 1852; of course, the Act of 1843 could not affect it. While the charter was of force, the contract to receive its bills could not be impaired.

In 1840, the Planters' and Mechanics' Bank was in a state of suspension; its bills and notes were not redeemed in gold or silver coin.

By the law of the State such suspension was cause of forfeiture. "A general refusal by an incorporated bank to redeem its issues and deposits in gold and silver coin is, *per se*, a sufficient cause of forfeiture of its charter, and such forfeiture may be enforced by *scire facias* in the Court of Common Pleas." (State *vs.* Bank of South Carolina, 1 Spears' L. R., 433.)

The State did not enforce the forfeiture; it pardoned the offence, and gave back, or rather, did not take away any franchise of this Bank; provided it would accept certain conditions specially set forth by the Legislature. (Act of 1840, 11 Statute at Large, 100.)

But among these conditions no reference whatever is made to the receivability of the bills of the Bank for taxes. Acceptance of the Act of 1840 continued the charter as it was.

"Where a charter has been thus forfeited, it continues to exist *de facto*, and when it exercises all the privileges and immunities previously granted by the Legislature, and the Legislature afterwards, by subsequent legislation, declared that the corporation shall exist, held to be a waiver by the State of the previous forfeiture. (State *vs.* Bank of Charleston, 2 McM. L. R., 440.)

Therefore, when the Planters' and Mechanics' Bank accepted the Act of 1840, its re-charter of 1830, unless where specially amended by the Act of 1840, was of force, as it was given in 1830.

In 1852, the Planters' and Mechanics' Bank again applied for a renewal of its charter. The conditions upon and subject to which the charter should be renewed were then at the will of the Legislature. The Act of 1843 was still in the Statutes of the State. If a general law, it would be part of the renewed char-

ter, unless expressly excepted. But in the grant of this renewed charter, the Legislature expressed its true intent as to the conditions of such renewal. It declared that, "the bills or notes of the said Bank shall be receivable by the Treasurer, tax collectors and other public officers, in payment for taxes and other moneys due to the State, *no longer than while the said Bank shall promptly pay on demand, gold and silver current coin for their notes;* but whenever the said Bank shall refuse or delay to pay any of their notes in gold or silver current coin, or whenever there shall be a protest on any of the bills or notes of the said Bank for non-payment in specie, *it shall be the duty of the Comptroller-General to forbid the receipt of the bills or notes of the said Bank for taxes and other public dues,* unless satisfactory reasons be shown to him by the said Bank for contesting in a Court of Justice, the payment of such protested bills or notes."

(12 Statute at Large, 212.)

We see thus that not before 1852 even in the case of a private Bank, was it declared that *only* while its bills were redeemed in gold or silver coin should they be receivable for taxes and other dues to the State; that the inhibition continued only during such refusal; and that the refusal to receive these bills was to follow the order of the Comptroller-General.

Compare this legislation with that relating to the Bank of the State.

In the same year (1852) the charter of the Bank of the State was extended to the 1st January, 1871.

In this renewal certain restrictions were placed on the right of the Bank to make subscriptions for railroads, and other provisions made for the Bank; but no such provision is found as appears in the renewal of the charter of the Planters' and Mechanics' Bank, (or any of the private banks) concerning the receivability of its bills for taxes. And while no allusion is made to the sixteenth section of the Act of 1812, the 5th section of that Act is expressly repealed.

(12 Stat. at Large, 150.)

This Act of 1852 must have controlling influence in the decision of this case, and it is now set forth as it is found in the Statutes of that year.

"AN ACT TO EXTEND THE CHARTER OF THE BANK OF THE STATE OF SOUTH CAROLINA.

I. *Be it enacted by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same,* That from and after the expiration of the present charter of the Bank of the State of South Carolina, the same shall be, and is hereby extended until the first day of January, which shall be in the year of our Lord one thousand eight hundred and seventy-one.

II. That the said Bank shall not have authority at any time to make any subscription to the capital stock of any railroads, or other work of internal improvement within or without the limits of this State, unless by the permission of the Legislature.

III. That the fifth section of an Act, entitled 'An Act to establish a Bank, on behalf of and for the benefit of the State,' be and the same is hereby repealed.

IV. It shall not be lawful for said Bank, except in settlement with other Banks, to pay or deliver out in payment or satisfaction of any demand upon it, or by way of loan or discount, any bill, note, check, or other paper of any other Bank.

V. That it shall be the duty of the President and Directors of the said Bank, whenever any part of the funded debt of the State (except the three per cent. stock) can be purchased at or under par, to purchase the same on account of the sinking fund; hereafter the profits of the Bank, as they are annually ascertained and carried to the credit of the sinking fund, shall be disposed of in the following manner, that is to say, they shall be invested in the purchase of the funded debt of the State, (ex-

cept the three per cent. stock); *Provided*, the same can be obtained at or under par. And in case the said profits, or any part thereof, cannot be invested as aforesaid, within six months, after having been ascertained and carried to the credit of the sinking fund, then it shall be the duty of the President and Directors of the Bank to invest the same in the purchase of the three per cent. stock of the State; *Provided*, the same can be obtained at a rate not exceeding sixty-four per cent., or in bonds, notes or other obligations, made payable not more than six months after date, and secured by pledge of three per cent. stock of the State, at a rate not exceeding sixty-four per cent. or other funded debt of the State not above par, or other good and safe stocks readily convertible into cash, which shall be taken at a rate not exceeding ninety per cent. of the current price at which they are saleable at the time of taking such pledge. And it shall also be the duty of the said President and Directors to cause the accounts of the sinking fund to be kept in such manner as to show at all times what particular bonds, notes, stocks, and other securities, belong to the said fund.

VI. That from and after the first day of July next, any person or persons, corporation or body politic who shall within this State directly or indirectly pay out, pass or put in circulation any bank note, bill, certificateor acknowledgment of indebtedness whatsoever purporting to be a bank note, or of the nature, character or appearance of a bank note of a less amount or denomination than five dollars, issued or purporting to be issued by any bank or person or association of persons, in any other State, shall be subject to the payment of twenty dollars to be recovered by action of debt at the suit of the State, and appropriated one-half to the informer, and the other to the maintenance and repair of the public buildings in the district where the action is brought."

(12 Stat. at L., 149.)

The legislation of the State in regard to private banks, will be seen in the Acts of the same session of 1852. (12 Stat. at L. 212.)

We are thus brought to these considerations: if the Act of 1843 repealed the 16th section of the charter of the Bank of the State, must it not also have repealed the similar section in the charter of the Planters' and Mechanics' Bank?

If the Act of 1843 did not, and could not repeal the provision in the charter of the Planters' and Mechanics' Bank, is it to be presumed that the Legislature intended by the Act of 1843 to affect by that Act the charter of the Bank of the State, which was its own Bank?

If the Act of 1843 was a general law, did it not become part of the re-charter of the Planters' and Mechanics' Bank, unless expressly excepted?

If the Act of 1852 was necessary to define from that time the relation of the State to those who held the bills of the Planters' and Mechanics' Bank, why if that provision was to be operative so far as the bills of the Bank of the State were concerned, was it not also set forth in the re-charter of the Bank of the State?

To sustain the conclusion of the Defendants in Error as to the intent and effect of the Act of 1843, we must suppose that the language in the Act of 1843 is equivalent to that used in the Act of 1852. That the effect of the Act of 1843 is expressed in the Act of 1852. If this be so, why should it be expressly set forth in the Act of 1852, as regards the Planters' and Mechanics' Bank, and not set forth in the Act of the same year which re-chartered the Bank of the State?

The argument for the Defendant in Error, requires us to suppose that the conditions imposed on the Planters' and Mechanics' Bank in 1852, are to be implied as if with the same distinctness inserted in the re-charter of the Bank of the State.

But still more are these difficulties increased, when in 1857, at the time when all the Banks suspended specie payments, the bills of the Bank of the State were then *only* and specially directed to be taken for taxes. In that year the Legislature enacted, that "the Comptroller-General shall direct the tax collectors and treasurers to receive the taxes and other dues of the State, *only in notes of the Bank of the State, or of specie paying Banks of this State, or in coin of the United States.*"

(12 Stat. at Large, 596.)

We are now brought to the legal deductions of the propositions of the Defendant in Error.

1. That the argument which assumes that the Act of 1843 relates to and repeals the 16th section of the Act of 1812, does not relate to and repeal a similar provision in the charter of the Planters' and Mechanics' Bank. And this, because in the case of the Planters' and Mechanics' Bank, such a provision created a contract, which the State could not impair during the continuance of the charter: the operation of the Act, therefore, is confined to the Bank of the State, and makes that Bank subordinate to every other.

2. That such a policy on the part of the State is inconsistent with the relations of the State to that Bank; inconsistent with the purpose for which the Bank was chartered: inconsistent with any policy which can be suggested for the State or the Bank: and inconsistent with every Act of the Legislature prior to and subsequent to 1843 in regard to this Bank.

The repeal contended for by the Defendants in Error is by implication. It rests only on the presumption of an intention to repeal. And that presumption is based upon the language used in the Act, in connection with the circumstances in each case.

In this case the presumption of a repeal of the 16th section of the Act of 1812, is rested simply upon the alleged impossibility of reconciling the operation of the Act of 1843, with the section of the Act of 1812.

But the true question is not presented, when thus stated. It is only properly stated thus: *is the receivability of the bills of the Bank of the State, this particular Bank owned by the State and for which the State was responsible, for taxes due to that State, so irreconcilable with the Act of 1843, that the two Acts cannot coexist, and the latter must operate as the repeal of the former.*

What is it, which so irreconcilable makes this assumed antagonism between the 16th section of the Act of 1812, and the Act of 1843?

The Supreme Court of the State has said, "if there is repugnancy between two Acts which cannot be reconciled, the latter is to be construed as repealing the former." "*If such construction can be given each as will permit them to stand together, they will both be regarded of force.*" "The Act of (1843) was a general one, not confined to a particular period. Its design was to qualify the obligation which rested on the State to accept, under all circumstances in payment of dues, not only the notes of the Bank of the State of South Carolina, but of all such other Banks as under their respective charters and various provisions had the right to demand that their bills should be so received." "The Act of 1843 was a general one, and intended to be permanent in its operations, subject to any exceptions which the General Assembly might make for any particular year."

(Wagner *vs.* Stoll, 2 So. Ca. R., p. 557.)

But this (we say with the greatest respect) is all assumed; for all of it which relates to the design of this Act in connection with the Bank of the State, there is no foundation. Where is the authority for the statement that the State intended to qualify its obligation for the bills of this Bank? No fact in the history of the State is more certain than that in 1843, the State had no other design than to increase and fortify its connection with the Bank.

But the State Court has said "the notes tendered by the re-

lator were not of any specie paying Bank of the State." (Id., p. 558.) And therefore because the Act of 1843 provided in general terms that the notes of specie paying Banks should be received for taxes, the Court justifies the refusal of the tax collector. No words of exclusion are found in the Act. And this Court in Furman & Nichol gave much weight to this fact. But the State Court has not given to it any consideration.

If the irreconcilable character of the 16th section of the Act of 1812, with the provisions of the Act of 1843, be as stated, the basis of the presumption of the repeal of the former by the latter, then the Act of 1857, by which the notes of the Bank of the State *only*, while that Bank and all other Banks were in a state of suspension, were specially made receivable for taxes; is in that enactment the proof that the Act of 1843, and the 16th section of the Act of 1812, are not irreconcilable with each other.

The presumption for the repeal is in this, that the two Acts cannot co-exist; but if they do co-exist, the basis for the presumption is removed. And they did co-exist in 1857; and did co-exist until 1865. If so, how can it be said that they cannot be reconciled, the one with the other?

If the Act of 1843 repeals the 16th section of the Act of 1812, it can only be because of the supposed intention of the Legislature not to receive for taxes bills of this Bank, unless they are payable in specie; but what becomes of that presumption when the Legislature of the State in 1857, on the first occasion after 1843, when that Bank suspended specie payment, declared that the bills of that Bank *only*, of all the suspended banks, shall be so received?

It is said that the Act of 1857 is only for the purposes of that year. Let it be so. If but for a year, still it shows, that in the year 1857, the 16th section of the Act of 1812 was reconcilable with the Act of 1843, and that the bills of the Bank, while they were not redeemable in specie, were made receivable

for taxes. And if reconcileable for that year, why not for any and every year?

If the two Acts can be consistent with each other for one year, repugnancy between them cannot be affirmed.

Consistency between them for a year excludes the idea of their being irreconcilable with each other.

For unless the incapacity for being reconciled with each other is permanent and continuing, it cannot be said that there is that inconsistency which forbids the possibility of their co-existence.

In a case to be presently cited, this Court made the "possibility" of two Acts being reconcilable with each other, sufficient to exclude a repeal by implication. Here is not "possibility," but the fact ascertained, that the two Acts are reconcilable with each other.

Look at the nature of this so-called inconsistency. It is, that the bills of the Bank of the State (in a state of suspension) should be received for taxes, when the Act of 1843 declares that the bills of specie paying banks should be so receivable. But the State itself comes in and declares that the bills of the Bank of the State shall be so received? The State, then, has made the two Acts consistent. But how? By that declaration in the Act of 1857, which shows that the provisions of the Act of 1843 were not intended to apply *to the bills of the Bank of the State.* And why not? Because the Bank was the State; the exponent of the credit of the State; the State was its owner; its sole corporator; derived profit from it; had pledged its faith for its solvency; intended to give it an advantage over all other banks in the State; and the declaration of the State in 1843, that the bills of this Bank should not be received for taxes, would have been a blow at its credit, at a time when it was assailed by those who were opposed to it; its overthrow sought for; and its continuance defended mainly upon the ground that

any interference with the Bank would deeply affect the public credit of the State.

The Act of 1852 renewing the charter of the Planters' and Mechanics' Bank, and other private Banks in distinct terms set forth, under what conditions the bill of the private banks of the State should be received for taxes; the omission in the re-charter of the Bank of the State in the same year of these and of all conditions whatsoever concerning the receivability of the bills of the Bank of the State for taxes; the special mention in the Act of 1857 of the bills of the Bank of the State, *only*, of the bills of suspended Banks as receivable for taxes; plainly indicate the difference in this respect between the bills of this Bank and the bills of other Banks.

Why should there be a difference? Why should the legislation of the State in regard to this Bank be different in some respects from that which related to other Banks? The Supreme Court in the case of Furman vs. Nichol, has set forth the reasons better than counsel can do. The Bank of Tennessee and the Bank of the State were organized on principles almost identical. Both of these Banks were created by the States in which they were located—both had as capital the funds of the States —both were intended for the benefit of each State; and both had like clauses in their charters concerning the receivability of their bills for taxes.

In relation to the Bank of Tennessee the Supreme Court has said, "The State of Tennessee through its Legislature in 1838, thought proper to create a bank in its name and for its benefit. It was essentially a state institution. The State owned the capital and received the profits, appointed the directors, and pledged its faith and credit for its support. This would seem to have been enough to establish the credit of the institution on a firm basis, and to inspire confidence in the value of its notes, so that they would obtain a free circulation among the people as money. But the Legislature in its anxiety to insure for these notes a still

greater confidence of the community went further and provided that they should be receivable at the Treasury of the State and by all tax collectors and other public officers in all payments for taxes and other moneys due the State."

"It will be readily seen that nothing could have been better calculated to accomplish the purpose the Legislature had in view than the incorporation of this guaranty into the charter of the Bank. *It assured the free circulation of their notes, gave them a credit over the issues of other banks, and furnished a security to those who held them against any serious loss*, if in the vicissitudes of trades, the bank itself should become embarrassed—for annually they would be enabled to use the notes at their par value in the payment of their taxes."

"That this contract was until withdrawn by the State a valid contract between the State and every note-holder of the Bank, obliging the State, to receive the notes for taxes, cannot admit of serious question."

In its exposition the Court proceeded to show that the profit depended on the ability of the Bank; that the longer the bills are withheld from redemption the greater the remuneration to the corporation; that every additional guaranty to the bills affords inducements not to return them to the Bank for redemption *in specie;* and, therefore, while the holder could demand specie for the bills, and the State specie for taxes, if both agree to forego this right which is done when the State accepts these bills for taxes, the benefit is mutual. These considerations affect the question of profit. They were in the case of this Bank as powerful as in the case of the Bank of Tennessee. But this State placed duties and obligations upon this Bank in regard to the credit of the State, which were irreconcilable with anything affecting the credit of the Bank.

And the Court concludes that "until the Legislature *in some proper way*, notifies the public that the guaranty thus furnished has been withdrawn, such a contract is binding in the State and within the protection of the Constitution."

Furman *vs.* Nichol, 8 Wall., R. 44.

Certainly this language could not be made more directly applicable to the State of Tennessee and the Bank of that State, than it is to the State of South Carolina and the Bank of the State.

In what "*proper way*" then, if any, has the State notified the public that its agreement to receive bills of the Bank of the State for taxes, has been withdrawn? It is said by the Act of 1843, and the language used in that Act has been referred to. Let us consider the position of the Bank of the State of South Carolina in 1843, and the circumstances which then affected this institution?

In 1840, this Bank had not suspended payments in specie. While every other Bank (but one) had suspended, this Bank continued to redeem its bills in specie. In 1843, its reputation and its credit were unimpeached.

Yet this circumstance of itself most calculated to inspire confidence, and furnish a reason for receiving its bills for taxes, and not for refusing them, was not the only thing to which we must give attention when inquiring whether in 1843 the Legislature of the State would make so fundamental a change, as to take from its bank that which was accepted as the best guaranty for its bills and their fixed value.

In 1843, a proposition was introduced to the Legislature of the State for winding up the affairs of the Bank. The President of the Bank addressed letters to the houses of Baring Brothers & Co., and to C. J. Hambro & Son, inquiring how far such a proceeding would affect the credit of the State; or be consistent with the faith pledged to its creditors. The State had given to the public creditor the pledge of the Bank of the State, and to close the operations of the Bank would be to break the pledge of the State, when, in 1838, it contracted what was called the Fire Loan. Such was the argument by which the continuance of the Bank was maintained. The replies of these eminent bankers were strong and emphatic in the expression of the opinion, that the maintenance of the

Faith of the State was involved in the maintenance of the credit of this Bank. (Bank Comp., 657 to 665.) Is the purpose of the Act of 1843, as alleged by the defendants in error, to be reconciled with this inseparable union of the Bank and the State?

At this period of time, that is from 1839 to 1843, it was most important to maintain, without the slightest impeachment, the credit of this Bank. It was at this very time that the inseparable connection of the Bank and the State, was insisted upon, as essential to the public credit and the maintenance of the public faith. Yet, at this same time, the argument of the Defendant in Error assumes that the State notified the commercial world that it qualified, if it did not positively withdraw, its guaranty to receive the bills of this Bank for taxes due to it; and thus, that a contract which guaranteed the credit of the Bank, and gave the highest value to its bills, was withdrawn by the State.

But, the obligation of the State under the charter to redeem these bills is too plain for doubt. Then upon what rational hypothesis can it be argued that the State should refuse for taxes these bills because they were not paid in specie by the Bank, when such neglect or refusal by the Bank gave the holder the immediate right to ask that the State itself should redeem them. It seems not to have been perceived by the Supreme Court of the State, that the bills of this Bank were always of value while they were receivable for taxes; and that if it were true that they ceased by the will of the State to be so receivable, because they were not redeemed in specie, that fact bound the State for their redemption in specie. What sense is involved in the refusal of the State to receive bills, because they were not redeemable by the Bank in specie, when the State itself became bound to redeem the same bills in specie, if payment in specie should be refused by the Bank? To argue the repeal of the 16th section of the Act of 1812, because the State refused to receive the bills of the Bank unless paid in *specie*, is to argue that the State would take from the Bank its chief source of credit; from itself a large source of profit; in order that the bills should be paid by the State itself. To deny

that such was the obligation of the State; and that such would be its duty in case of the refusal of the Bank to pay its bills in specie; is simply to argue that the State would not keep the faith it had pledged.

Still further. In the case of the private banks, the State in the grant of their charters had carefully protected the rights of the holders of their bills by imposing on the stockholders, in case of failure of these Banks, certain pecuniary liabilities. In the case of the Bank of the State there could be no such protection. The creditor who held these Bills had the pledge of the faith of the State. But that pledge could not be enforced at law. There was but one mode in which the process of law could operate to affect the State, so that the holder of the bills of the Bank could enforce the obligation of the State, and in so doing protect himself. That one and only mode, was by the State binding itself to receive its bills in payment of taxes and other dues to the State. This constituted a contract, and this could be enforced against the officer of the State; and thus could the State be forced to perform its contract. Take away this protection; let the bills of the Bank lose this support for that credit essential to their use; that use proportioned to the credit they had; and the profit of the State proportioned to that use; and no Bank would rest upon a less secure basis. It was a Bank wholly under the control of the Legislature; its Officers responsible alone to that Body; and that body having no responsibility to the creditors of the Bank. In the language of Judge Willard, "it is obvious that the Bank was created for the use of the State, a purely public purpose, and that the State intended to retain, and did in fact retain over the institution the fullest control capable of being exercised over a corporate institution * * * to the extent of the entire limit of the constitutional authority of the Legislature, the officers of the Bank, were bound to execute the commands and carry out the will of the Legislative authority; (State *vs.* Bank of the State of So. Ca., 1 So. Ca., Rep. p 63.)

The whole augument of the Defendant in Error thus resolves itself into the proposition, that at the time when

the State was adding to the credit of the private Banks, by increasing the security to those who received their bills; it was affecting the credit of its own Bank, by taking from those who held its bills, the best guaranty they had for the value of those bills, in the pledge of the State to receive them in payment of taxes, and other dues to the State.

How can it be supposed that the State in 1843, intended by the Act passed in that year to do that which is contended for by the defendant in error?

No one can refer to the history of this Bank, to any public document connected with it from the time of its charter to 1865, without being satisfied of the complete and inseparable union and identification of it with the State, while the State allowed it to exercise the functions of a Bank.

In the report to the Legislature in 1820, the Committee of the Legislature said, "at the time of its establishment, and for a considerable period afterwards, a very small part of the capital of the Bank consisted of money, the greater portion of it consisting of stock of different kinds and of debts due to the State, as will more fully appear by reference to the Comptroller General's report for the year 1812."

(Bank Compilation, p. 93.)

In 1821 the Committee of the Legislature reported that "the Bank has occasionally made large advances for the State in which no interest is charged, and it was through it the State was enabled to pay the General Government its quota of direct taxes during the late war."

(Bank Compilation, p. 96.)

In 1827 the Committee of the Legislature said, "the State is indeed so entirely identified with the Bank that the Legislature cannot be too deeply sensible of the fact. Let the people realize this truth, as one virtually affecting the best interest of the

State. Let them look to the Bank as bone of their bone, and flesh of their flesh. Let them know that its fate, whether it be good or evil, is their fate; that its prosperity is to them a blessing and its adversity a misfortune."

(Bank compilation, p. 147.)

In 1833 the Committee of the Legislature said, "to present in one view the advantages derived from the Bank as a source of revenue, the Committee beg leave to refer to exhibit D, which contains a statement of the capital income and rate per cent. of the Bank, from the time of its establishment to the present period." * * "From this statement it appears that the net profits of the Bank have amounted to $1,900,159 61, and the average rate per cent. on its capital has been $9 79 per annum." * * "The Committee also incline to the opinion that by the instrumentality of the Bank alone, without any increase of taxes, the payment of the public debt may be affected at the several periods when the same shall respectively fall due.

(Bank Compilation, 178.)

In 1838, the Legislature authorized the President and Directors of the Bank of the State to take such measures as in their judgment may be deemed proper to preserve *at par*, throughout this State, the bills which may be issued by any bank within its limits. (Bank Compilation, 117.)

(Reports of 1838, p. 117.)

In 1839, the Committee of the Legislature said, "the Bank created by the funds of the State is the property of all the citizens of the State." * * "It has become one of the most important duties of this Bank, under recent legislation, to regulate the currency of the State."

(Bank Compilation, 198.)

In 1841, the Committee of the Legislature made a very searching report, and said, "the extraordinary security for the

management of the Bank is contained in these words, "the faith of the State is hereby pledged for the support of the said Bank and to supply any deficiency in the funds specially pledged, and to make good all losses arising from such deficiency." Thus, this institution has in reality the whole resources of the State as its stay and support. It cannot fail in any event, though the State may suffer."

(Bank Compilation, p. 221.)

In the same Report it is said, "its creditors are secured beyond the more distant doubt, and its ability to redeem its circulation *in specie* certain. That the capital is also secured, and its future action promises a punctual discharge of all the debts of the State, principal and interest, at the day."

(Ibid, p. 236.)

In 1843, the Committee of the Legislature made its report, in all respects confirming all previous reports as to the condition of the Bank.

(Bank Compilation, p. 263.)

How could it be otherwise, when in the severe monetary crisis which had just then passed away, this Bank, with but one other Bank, had maintained specie payment of its bills, and was most immediately instrumental in maintaining the credit of the State?

Nothing can present the least plausible suggestion for the statement that the State, in the Act of 1843, intended to affect the Bank of the State, or in any manner change its relation to, or qualify its obligations to or for that Bank. But such was necessarily the effect of that Act, if intended as is maintained by the Defendant in Error. If to give this guaranty secured for these bills the highest value; to withdraw it, must lessen their value.

Let us now inquire whether anything connected with the private Banks called for the action of the Legislature.

In 1838, it was represented to the Legislature that a portion of the banks "decline keeping their notes at par, all over the State, by refusing to make arrangements for their circulation at the commercial metropolis of the State;" * * "the consequence is that the currency which is the weaker remains in the hands of the people, and the banks which take least pains to keep their notes at par derive the most benefit." * * "The Bank of the State whose issues could with perfect safety be extended to two millions of dollars, has its paper returned home upon it, and its issues are contracted as low as $646,000, and of course its business and profits must experience a corresponding reduction. The State treasury, too, is used as a source of profit at the expense of the State. *For as the notes of all the Banks in the State* are receivable there, those who have taxes to pay buy up these notes below par, and pass them off at par to the treasury; and all the loss is borne by the people themselves."

(Reports of 1838, p. 117.)

Here in 1838 the receivability of the bills of the private Banks is conceded. In regard to these, securing their convertibility was intended. The Legislature thought that they should be made convertible in Charleston. The doubtful manner in which the right to require it is announced, is suggestive of the question of the authority of the Legislature to make the requirement.

Be that as it may; the Bank of the State was the agency by which the State proposed to apply a remedy for the mischief. The Legislature, therefore, adopted this Resolution.

"*Resolved*, That the President and Directors of the Bank of the State of South Carolina be authorized and requested to take such measures as in their judgment may be deemed proper, to preserve at par, throughout this State, the bills which may be issued by any Bank within its limits."

(Reports of 1838, p. 117.)

The adoption of this resolution manifested the highest confidence in this Bank; to it was given the widest power; it justified both when in 1839–40, with only one other Bank, it maintained payment in specie. Yet the argument for the Defendant in Error, invites us to a conclusion, which is the denial of confidence; and would at the same time make the power given by this resolution, the greatest and most irresponsible.

In 1843, at the same session of the Legislature, when this so-called repealing Act was passed, the Legislature had before it the fact, that the profits of the Bank had amounted to $3,672,291.24. The interest on the original capital at 7 per cent. was $2,208,993.48. The excess of profit over interest, $1,463,297.95. "This excess (said the President) is considerably more than the whole original capital of the Bank."

(Bank Compilation, 560.)

This resolution now referred to is the explanation of all the legislation of the State in relation to its chartered Banks. It favored all: gave protection to them: but always looked to its own Bank, representing the great power of the State, as the agency by which it could control any abuse of the privileges it had granted.

We are thus brought directly in the face of these facts. In 1838 the State imposed on the Bank of the State the authority and power to keep the bills of the private Banks at par throughout the State. In 1839–'40, with one other Bank, the Bank of the State only did not suspend specie payment. In 1843, the [illegible] d the suspension of the private Banks and con[illegible] charters. In [illegible] of them, the [illegible] ed contracts by which their bills should be received for taxes; this contract the Act of 1843 could not and did not impair. It was not qualified in the case of the private Banks until 1852, and then only because their charters were to be renewed. Yet the argument is urged with zeal, that with such an obligation on this Bank, and under such circumstances connected with the private Banks, the State did under-

take in 1843 to "qualify the obligations which rested on the State," and rescind that contract, which was the highest guaranty it had given to the holders of its bills. Can that proposition be sutained?

2d. We submit then that this Court will be satisfied that the Legislature in the Act of 1843 did not intend to repeal the 16th section of the Charter of the Bank. But if it did so intend, has it in that Act of 1843 properly manifested such intent?

If the Legislature of the State intended by the Act of 1843 to repeal the 16th section of the charter of this Bank, did it by that Act do so, in a "proper way," to notify "the public that the guaranty of the State thus furnished had been withdrawn?" If not, then in the language of this Court, "until" that was done, "such a contract is binding on the State, and within the protection of the Constitution."

This alleged "proper way" of giving notice that the guaranty of the State was withdrawn, is by an Act of the Legislature. And it is true that "a public Act of Parliament binds all mankind." But the notice it gives must be sufficient.

Does the Act give such notice as is claimed? Is there in it that which informed the public of its purpose in regard to the bills of this Bank? And if calculated to excite inquiry, was not the Act of 1857 enough to satisfy the public that it did not embrace the bills of this Bank?

The title of the Act, (1843), as we have seen, is "An Act prescribing the duties of certain officers in the collection of supplies, the payment of salaries, and for other purposes." Neither in the title, nor in any section of the Act, is there reference or allusion made to these bills.

The sufficiency of this or any notice depends altogether on the inquiry, whether it is so distinct as to inform the public daily receiving these bills, that the guaranty of the State had been withdrawn; and next, whether such notice has been, in any proper manner, actually or constructively brought home to those who were trading with the Bank?

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We are thus brought directly in the face of these facts. In 1838 the State imposed on the Bank of the State the authority and power to keep the bills of the private Banks at par throughout the State. In 1839–'40, with one other Bank, the Bank of the State only did not suspend specie payment. In 1843, the State pardoned the suspension of the private Banks and continued their charters. In some of them, the charters created contracts by which their bills should be received for taxes; this contract the Act of 1843 could not and did not impair. It was not qualified in the case of the private Banks until 1852, and then only because their charters were to be renewed. Yet the argument is urged with zeal, that with such an obligation on this Bank, and under such circumstances connected with the private Banks, the State did under-

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There can be no more satisfactory test by which to ascertain whether the Act of 1843 was accepted as repealing the 16th section of the charter of 1812, than the opinions of those who were in such places of trust and confidence as made them cognizant of the Act, and of its intent and purpose.

And of these first we appeal to the Legislature of the State.

In 1840, the Legislature passed a resolution directing the President of the Bank of the State of South Carolina "to have compiled and published in pamphlet form, all Acts and clauses of Acts, and all resolutions passed and adopted by the Legislature in relation to the said Bank and Branches thereof, and that he do cause a sufficient number of copies to be placed on the tables of the members at the beginning of the next session."

In 1842, the Legislature ordered a new edition. This edition was laid before the Legislature in 1843.

In 1846, the edition of 1843 being exhausted, the Legislature ordered a new edition, which was prepared.

In this compilation, there is no reference made to the Act of 1843, as relating to, or in anywise affecting the charter of the Bank.

This compilation made by the authority of the Legislature, is the highest evidence of what it considered as the laws of force which affected this Bank.

It was notice to the world of all the Acts and Resolutions which related to that Bank. It would violate every rule of law, all sense of right, to affirm that the State could protect itself from its liability, under the pretext of an Act or Resolution which it left out of that compilation.

It was not that the Acts of the Legislature in 1843 were overlooked, for in the same compilation we find three distinct Acts of that session incorporated with the other Acts, therein compiled as relating to the Bank of the State. How can it be denied, then, that the Legislature thus declared as clearly as if it had said in express terms, that in "the Acts, clauses of Acts, and all resolutions passed and adopted by the Legislature in relation to the said Bank and

branches thereof," the Act of 1843 was not included. We have a compilation by the Legislature of all Acts in relation to this Bank, published by authority; other Acts of 1843 are therein published; this Act of 1843 is not therein included; if it did relate to the Bank, it was, so far as the Bank was concerned, the most important of all these Acts; yet it was not there found as an Act relating to the Bank. And we are told that this Act of 1843 was notice to all, that this guaranty had been withdrawn. Again—

In 1865, Mr. Furman, the President of the Bank, in his report to the Legislature said, "in connection with the subject of State revenue, it is proper to bring to your attention that the *bills of the Bank of the State are receivable for taxes.* If the taxes imposed at this session are paid in those bills, it is plain that the income of the State will not be available to meet its current expenditures. It may, therefore, be necessary either to direct that the taxes of this year shall only be paid in the currency of the United States, *upon the ground of the public necessities; or to require that any tax payer who offers to pay the tax to be this year imposed with the bills of the Bank of the State, shall at the same time pay the taxes of the last year (which have not been generally collected) in the same medium.* Such an arrangement would either occasion the taxes to be paid in United States currency, *or would so reduce the volume of Bank currency, as to make the bills available to the State as a medium of payment. This would also enable the State to settle the advances made by the Bank without incurring a new obligation.* (Report of Mr. Furman for 1865. See Report of Legislature for 1865, p. 57.)

Again in 1868, the Legislature of the State called upon the Attorney-General for his opinion in relation to the Bank. Touching this question of the receivability of these bills for taxes, he said "it should be remembered that prior to the incorporation of the Bank of the State, the bills of the Banks within the State were also receivable in the same manner for taxes and other dues to the State; but when, subsequently to

the chartering of the Bank of the State, the old Banks applied to be re-chartered, this provision was stricken out of their new charters, and the bills of the Bank of the State alone continued receivable for debts due the State. The bills of other Banks were receivable only so long as they were redeemable in specie; but the bills of the Bank of the State were receivable as specie, whether redeemable in specie or not." * * * "The only possible grounds upon which this Act (referring to an Act of 1857) could have rested, were that the State was bound by the Act of 1852 to receive the bills of the Bank of the State in payment of taxes, and being herself the guarantee of the Bank, she was compelled to receive her own bills in satisfaction of her own claims." (Opinion of the Attorney-General, Mr. Chamberlain, 24th August, 1868.)

In the same year, 1868, the Legislature of the State authorized the funding of the bills of the Bank of the State issued prior to the 20th December, 1860, in bonds of the State, and "to the punctual payment of the principal and interest of said bonds the credit and faith of the State is hereby pledged."

(14 Stat. at Large, p. 22.)

It was not considered expedient to fund the bills issued after the 20th December, 1860, because it was not known whether such bills were tainted because of the purpose for which it was supposed they had been issued. That question has been tried, and the bills issued since 20th December, 1860, in the judgment of the Supreme Court of the State, are in all respects as valid, legal obligations as those issued before that time.

But in funding the bills of this Bank in 1868, the Legislature recognized without dispute the liability of the State for bills issued by this Bank, prior to December, 1860. The bonds to be issued for the surrender and delivery of these bills to the Treasurer, were to be given "to the owner of said bills in payment and redemption of the amount of said bills, and interest thereupon from the time when such bills were presented for payment, at six per centum per annum."

Is there needed clearer proof of the recognition by the State of its liability for the bills issued up to 1860? And when the liability of the State for these bills is admitted, upon what ground can it be said that the State would refuse to receive them for taxes?

It will not be said that it could refuse to receive them if it so pleased, and that it could not be forced to redeem them, unless it so pleased. That would be the argument of power, not of morality or right; and to imply repudiation of an obligation because of power, and against morality and right, would surely not be asked of this Court.

The effect then of this Act of 1868 must be conclusive. Such an admission of its liability ought to conclude this discussion. Yet the effect of this admission is sought to be avoided, by saying that the Legislature intended by that Act to take the assets of the Bank and that the issue of the bonds was for the indemnity of the creditor. A bargain if so, and not an honest one, by the State, with itself. It is not for us to say what the Legislature intended, but we do know what it said. And no language can be more expressive of its liability than the obligation which it undertook.

The argument which was heard here for the Defendant in Error, plainly admits the liability of the State for these bills under the charter of 1812. (Mr. Chamberlain's brief, 24). But it denies that this is the admission of receivabilily for taxes. If the obligation of the State is to redeem in specie, and if we are to suppose that the obligation will be kept, why presume that the State intended to do so idle a thing as to refuse them for taxes? It may have been intended by these bonds to get control of the assets of the Bank. But it is more grateful to us, as that purpose has not been avowed in the Act, to suppose that the State intended to maintain the pledge it had given of its faith and credit. Nor let it be forgotten, for such is the fact, that the State had withdrawn from the Bank at various times more than the whole of the capital it had contributed, with interest; and that the Bank ultimately was made bankrupt by the State itself.

the chartering of the Bank of the State, the old Banks applied to be re-chartered, this provision was stricken out of their new charters, and the bills of the Bank of the State alone continued receivable for debts due the State. The bills of other Banks were receivable only so long as they were redeemable in specie; but the bills of the Bank of the State were receivable as specie, whether redeemable in specie or not." * * * "The only possible grounds upon which this Act (referring to an Act of 1857) could have rested, were that the State was bound by the Act of 1852 to receive the bills of the Bank of the State in payment of taxes, and being herself the guarantee of the Bank, she was compelled to receive her own bills in satisfaction of her own claims." (Opinion of the Attorney-General, Mr. Chamberlain, 24th August, 1868.)

In the same year, 1868, the Legislature of the State authorized the funding of the bills of the Bank of the State issued prior to the 20th December, 1860, in bonds of the State, and "to the punctual payment of the principal and interest of said bonds the credit and faith of the State is hereby pledged."
(14 Stat. at Large, p. 22.)

It was not considered expedient to fund the bills issued after the 20th December, 1860, because it was not known whether such bills were tainted because of the purpose for which it was supposed they had been issued. That question has been tried, and the bills issued since 20th December, 1860, in the judgment of the Supreme Court of the State, are in all respects as valid, legal obligations as those issued before that time.

But in funding the bills of this Bank in 1868, the Legislature recognized without dispute the liability of the State for bills issued by this Bank, prior to December, 1860. The bonds to be issued for the surrender and delivery of these bills to the Treasurer, were to be given "to the owner of said bills in payment and redemption of the amount of said bills, and interest thereupon from the time when such bills were presented for payment, at six per centum per annum."

Is there needed clearer proof of the recognition by the State of its liability for the bills issued up to 1860? And when the liability of the State for these bills is admitted, upon what ground can it be said that the State would refuse to receive them for taxes?

It will not be said that it could refuse to receive them if it so pleased, and that it could not be forced to redeem them, unless it so pleased. That would be the argument of power, not of morality or right; and to imply repudiation of an obligation because of power, and against morality and right, would surely not be asked of this Court.

The effect then of this Act of 1868 must be conclusive. Such an admission of its liability ought to conclude this discussion. Yet the effect of this admission is sought to be avoided, by saying that the Legislature intended by that Act to take the assets of the Bank and that the issue of the bonds was for the indemnity of the creditor. A bargain if so, and not an honest one, by the State, with itself. It is not for us to say what the Legislature intended, but we do know what it said. And no language can be more expressive of its liability than the obligation which it undertook.

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It is true that in 1868, the Legislature had before it, the decision in the Graniteville case; but it is not saying too much to say that the Legislature, with much reason too, saw in the opinion of the Attorney-General a far safer guide, than it could find in the decision of the case referred to. The Legislature saw that the object of the State had been, as was well said by the Attorney-General, "*to give the Bank of the State an advantage to which no other Bank in the State could pretend.*" * * "*The object of such a pledge was to establish beyond a doubt the perpetual solvency of the Bank, and thus to enhance the profits of the Bank, to which the State is alone entitled.*" * * * "No stronger proof of the complete identification of the State with the Bank could have been given. Not only does she declare herself responsible for all lawful obligations of the Bank, but she expressly declares herself liable for debts contracted in direct violation of the charter, and in express disregard of the authority of the State." * * "*The State thus sought to silence and set at rest every doubt, as to the perfect solvency of the Bank and the constant safety of those who should become her creditors. No responsibility could be more complete; no language could be more unmistakable.*"

(Mr. Chamberlain, opinion to the Legislature, 1868.)

Let us now consider what we have so far shown:

1. The Legislature in 1846 publishes under its own direction all Acts and Resolutions which have been passed concerning this Bank. The Act of 1843 is not among the Acts and Resolutions so published.

2. The President of the Bank who had filled that office for a long time, and for years previously otherwise connected with the Bank, in 1865 reports to the Legislature as a fact concerning which there was no question, that the bills of this Bank were receivable for taxes.

3. The Attorney-General of the State in 1868 reports to the Legislature that these bills are receivable for taxes: and thereupon the Legislature repeal the Act by which they are receivable.

In 1868, the Legislature of the State then for the first time did repeal the 16th section of the Act of 1812 in plain and express terms. In the 4th section of the Act of the 15th September, 1868, it declared that "the 16th section of the Act ratified the 10th day of December, 1812, entitled "An Act to establish a Bank in behalf of and for the benefit of the State, and all Acts and parts of Acts which render the bills of said corporations receivable in payment of taxes and all other debts to the State *be and the same are hereby repealed.*"

(12 Stat. at Large, p. 22.)

How idle such a declaration if that section had been repealed in 1843; the fourth of a century preceding.

In the elaborate exposition of the Attorney-General in 1868, the Act of 1843 is not even alluded to, as in anywise relating to this Bank or its bills; and in the return of the tax collector in the Graniteville Manufacturing Company case, it is not even set forth as the ground upon which these bills were refused.

Indeed no one ever doubted that the bills of the Bank were receivable for taxes until the decision of the State Court in 1867 (December) in the case of the Graniteville Manufacturing Company vs. Roper, Tax Collector, (15 Rich., L. R., 138.)

Twenty ~~Thirty~~-five years after the Act of 1843 was passed, it was then discovered that it had repealed the Act of 1812; while during that long period, such a repeal had never been suggested.

In the Graniteville Company case a mandamus was asked to the tax collector to compel him to receive bills of this Bank for taxes: and he refused upon the ground that he did so in obedience to the 5th section of the Act of 1866, which prescribed, that "the taxes herein levied shall be paid *only* in gold and silver coin, United States Treasury notes, or notes of National Banks, or the bills receivable of this State and all pay certifi-

cates of juries and constables for attendance in the Courts." (13 Stat. at Large, 398.)

The Court held, that bills of this Bank to be receivable under the 16th section of the Act of 1812, must be bills which were at the time when offered for taxes convertible into specie; in other words that it was not *the form* of the bill, but the fact of present convertibility which gave the holder a right to have such bills received. And as the bills so rendered in 1867 were not convertible they could not be received for taxes. Every one who reads the judgment of the Court must be satisfied that the case turned entirely upon this point. The decision, so far as the Act of 1843 was in question, is briefly disposed of, in the simple statement that it is "a virtual repeal of the 16th section of the Act of 1812."

But the judgment of the Supreme Court of the United States in the case of Furman *vs.* Nichol completely overthrew the first and chief ground taken in the State Court. Resolved into its positive elements the decision of the State Court is this: the State guarantees these bills to make them of value; it withdraws its guarantee by which it makes them of no value; and then refuses to receive them because they are of no value.

The decision of the Supreme Court in Furman *vs.* Nichol was subsequent to the decision in the State Court in the case of the Graniteville Company; and overruled every material point made in the judgment of the State Court, except that relating to the Act of 1843, which, of course, was not in question in Furman vs. Nichol.

Upon the authority of Furman *vs.* Nichol, these cases now before the Court, were brought in the Court of the State. In the judgment of that Court, there is ruled, but one point; and

that is the repeal by the Act of 1843, of the Act of the 16th section of the Act of 1812. To the reasoning of the Court in support of this proposition, we have now presented considerations which show that it cannot be sustained.

In addition to all of this we have the admitted fact, that the bills of this Bank have been at all times received for taxes from 1812 to 1865. This, it is said, is not a material averment, and therefore the admission of its correctness because of there being no denial of it in the return, is said to be immaterial. To this we may refer again. But in the meanwhile, we may ask, what admission is more potent than that which, by the consistent acts and conduct of the Defendants in Error, refutes the pretexts by which liability is now avoided?

That the bills of this Bank constitute a debt for which the State is liable, cannot be denied. Without the 16th section of the Act of 1812, such bills would not be set off against taxes, because in general, taxes due to a State, are not regarded as a debt. But if the State itself shall regard taxes due to it as a debt, setoff must apply. And it is this that the State has done. It declares that "all taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State by a party against whom the same shall be charged."

(Rev. Stat. of S. C., p. 93.)

The argument for the defendants in error assumes that up to 1843, the true construction of the Act 1812 required only that the bills of the Bank should be *in form* payable in gold or

silver, and that the Act of 1843 made it of *the substance* that the bills should be *actually convertible* into gold or silver coin.

And it is in this, as it is alleged, that the irreconcilable character of the Act of 1812 and 1843 are presented.

This is mere assumption. The decision in the Graniteville Company case is wholly adverse to this. The State Court held that the Act of 1812, meant present convertibility of these bills. But the Supreme Court of the United States, in Furman *vs.* Nichol, held that the guarantee of the State was equivalent to the assurance of convertibility, and that inconvertibility by the Bank did not excuse the State. The logical sequence of Furman *vs.* Nichol, is not that the section related to the *form* of the note, but that the *substance*, if wanting, furnished no defence for the State, because the Bank and the State were one. But the defendants in error are driven to this distinction between the *form* and the *substance* of the bills to sustain the alleged repugnancy, because of which the argument for the repeal is made.

The defendants in error assuming that the Act of 1812 related only to the *form* of the note, and that the Act of 1843 thenceforth substituted the *substance* of the promise for *that form*, refer to the case of Davies *vs.* Fairborn, 3 How., 643, to show that a repugnancy between an older and more recent statute, operates as the repeal of that which is the older. The decision in that case rested upon the fact declared by the Court, "that no other modes of conveyance than those which are so prescribed, (that is by the later Act,) will be valid." If so, the repugnancy in that case was clear.

But in this case it has been seen: 1st. That the Act of 1843 had not, and could not have had any effect whatever upon the charter of any private Bank. That the charter was a contract. That such a charter in any case of suspension was saved from forfeiture, with every right incident to it, by the Act of 1840; and that forfeiture being condoned by this Act of 1840, the State could not take away from the Banks the right to have

their bills received for taxes; and this is seen in the Act of 1852, when the re-charter was given; and when the State in the new charter could provide its safeguards.

2d. That besides other considerations which lead to the conclusion that the State did not intend that the Act of 1843 should apply to the bills of the Bank of the State, in 1857 the bills of this Bank only, of all the suspended Banks, were specially directed to be received for taxes.

And here let us consider this Act of 1857, by which the bills of this Bank only were made receivable for taxes. That this Act did distinguish between the bills of this Bank and the bills of the private banks is clear. That it did make these bills *only* receivable is clear. Why the Legislature should make them *only* receivable, the defendant in error cannot explain. Why if receivable that year, they should not be receivable every year, cannot be explained. The only reply given to the argument for these bills based upon the Act of 1857, is, that it was made for that year, and expired with its close. That it was an Act to raise supplies for that year, and was not, therefore, general legislation.

We propose now briefly to show, that so far as this and other like Acts to raise supplies, relate to the mere matter of taxes; how to be raised, and at what rates assessed; it is true that these are intended only for that year. But there are numerous cases in which we will find in the Acts to raise supplies matter of general legislation. It was only by the Constitution of 1868 that it was thenceforth required, that every law shall relate to but one subject, and that be expressed in the title. (Art. 2, sec. 20, Constitution.)

We come now in their order to these Acts to raise supplies.

In 1816, in one of these Acts, the Legislature authorized a conveyance of lands, gave permission to sell lands for payment

of debts, directed the Treasurer to convey certain lands, and authorized certain trustees to remit certain claims.
(6 Stat. at L., p. 67.)

In 1821, in another of these Acts, is legislation concerning the Board of Public Works.
(6 Stat. at L., p. 172.)

In 1822, in another Act, are certain requirements concerning sales of mortgaged property given to the paper medium Loan Office.
(6 Stat. at L., p. 196.)

In 1823, in another Act, the Comptroller is relieved from signing transfers of stock; and the duty devolved upon the President of the Bank.
(6 Stat. at L., p. 227.)

In 1824, in another Act, is the regulation of the power given to the Intendant and Wardens of Columbia to levy taxes in that town.
(6 Stat. at L., p. 254.)

In 1825, in another Act, the office of Assessor is established.
(6 Stat. at L., p. 274.)

In 1828, in another Act, is the regulation of the taxing power given to the Intendant and Wardens of Cheraw.
(6 Stat. at L., p. 375.)

In 1840, in another Act, is legislation concerning dividends on shares in the Southwestern Railroad Bank.
(11 Stat. at L., p. 97.)

In 1857, in another Act, is legislation for the issue of bonds to the Blue Ridge Railroad Company.
(12 Stat. at L., p. 596.)

But the most remarkable is in the Act of 1865, to raise supplies, when the most important legislation concerning the Bank of the State, since its creation was adopted. Legislation intended to be of a permanent and continuing kind.

(13 Stat. at L., p. 7., Act of 1865.)

How then can it be said that every Act to raise supplies and every section in any and every of these Acts were operative and of force only for the year in which the Acts were passed.

Then again it is said the direction in the Act of 1857 to receive *only* the bills of this Bank was not re-enacted, and therefore, that the Act of 1843 came again into operation.

Such a statement betrays ignorance of the fact, that in 1858 the banks had all resumed specie payment. The re-chartered banks in 1852 had the right to require that then being specie paying banks their bills should be received for taxes; and the Bank of the State had that right under its original charter.

But here is the great fallacy which underlies all of the argument on the part of the Defendants in Error, that relates to the Act of 1843. That Act created no contract with any bank or banks. It was the charter of each bank which established its rights under such a contract as grew out of that charter. The contract being there the Act of 1843, could not in any way affect it. And when thus the stress and force of the argument relating to that Act is directed to the Bank of the State; and that Act could reach no other bank in the State; it becomes so palpably absurd to suppose such to be the intention of the Legislature in regard to its own Bank, that no argument can be stronger than this simple statement.

3d. It is admitted that the repeal contended for in the Act of 1843 is by implication.

This Court has repeated again and again that such modes of repeal are not favored.

And with this intimation, and with what is said in other cases, the repeal here cannot be sustained.

In Edward *vs.* Darby, 12 Wheat. R. 206, this Court has said "in the construction of a doubtful and ambiguous law, the contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect."

In that case, the Court said, "the law was not only thus construed by the Commissioners, but that construction seems to have received, very shortly after, the sanction of the Legislature." In this case we have shown that the construction of the Act of 1843 was, that it did not apply to this Bank, nor to its bills; and that such bills were at all times receivable for taxes. We have shown moreover than this construction not only seemed to have received the sanction of the Legislature; that in the Act of 1857 it did have that sanction. We have shown that such was the unqualified opinion of the Attorney-General.

In the Canal Company *vs.* Hill, 15 Wall., 94, this Court has said, it would look to the *substance* as distinguished from the *form* of an agreement, to give it a fair and just construction and ascertain the substantial intent, which is the fundamental rule in the construction of agreements.

The decisions of the State Courts in the two cases, in 15 Rich. L. R., 138, and 2 So. Ca. R., (N. S.,) 538, are plainly rested upon considerations of State policy.

Considerations of policy have been by this Court distinctly pronounced as dangerous in their tendencies, when used by Courts to decide questions between the Government and an individual.

Smoot's case, 15 Wall. R., 36.

How sound and safe is this rule, when we consider how great and marked are the changes which come over us after the

lapse of a few years, in regard to matters of public or of private conduct. What is the policy of the State, when this Bank is the great fiscal agent of the State, a source to it of great profit, called on at all times to sustain its credit, its existence in the great exchange of the commercial world regarded as essential for the maintenance of the credit of the State? What is the policy of the State when that same Bank is bankrupt?

This Act of 1843 was certainly construed as not affecting the Bank of the State, and the Act of 1857 is the evidence of the sanction given by the Legislature to this construction.

In Wood *vs.* the United States, 16 Pet. R, 342, it is laid down that for the repeal by implication, a positive repugnancy must exist between the provisions of the old and the new law.

In McCool *vs.* Smith 1 Black. R. 459, this Court said "it is possible (this in italics) to reconcile the two Acts." * * "The leaning of the Court is against the doctrine if it be possible to reconcile the two Acts."

In Furman *vs.* Nichol, 8 Wall. 44, this Court said "Courts do not favor repeal by implication, and never sanction them if the two Acts can stand together."

In Henderson's tobacco, 11 Wall. R. 652, commenting on the United States *vs.* Tynen 11, Wall. 88, this Court said "when the powers or directions under several Acts, are such as may well subsist together, an implication of repeal cannot be allowed.

In French *vs.* Edwards, 13 Wall. R, 507, this Court said statutory requirements for officers in the conduct of business, and which do not if disregarded injuriously affect parties interested, are not usually regarded mandatory, unless accompanied by negative words imparting that the Acts required shall not be done in other manner or time than that designated."

4th. And this brings us to the last point we make against this repeal, that up to 1865, at no time, nor under any circumstances,

have the bills of this Bank been recognized otherwise than as receivable for taxes.

This is so charged; this is not denied; this, therefore, is a fact before the Court.

But it is said this is not a material averment. If the averment of the conduct of the State from 1812 to 1865, in relation to any particular matter, as explanatory of its purpose and intent therein, be not material what shall be considered material in such an issue?

This Court will decide how far this avertment is material.

Nothing qualifies the statement that every bill of this Bank was issued by it, with a virtual stamp on the face of it, that it was issued under its charter of 1812, and with every incident to the bill given by that charter.

The question in the case is immediately within the principles of Woodruff *vs.* Trapnall, 10 How. R., 190; Curran *vs.* State of Arkansas, 15 How. R., 304; Furman *vs.* Nichol, 8 Wall, 44.

And in conclusion, to this case, we apply the language of this Court in Woodruff *vs.* Trapnall, 10 How. R., 190. "We naturally look to the action of a sovereign State to be characterized by a mere scrupulous regard to justice and a higher morality, than belongs to the ordinary transactions of individuals."

Can the defence in this case be associated with that "higher morality," or "scrupulous regard to justice?"

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1873.

THE STATE Ex Relation C. T. LOWNDES and JAMES ROBB, Trustees,

vs.

WILLIAM GURNEY, County Treasurer.

THE STATE, Ex Relation THEODORE D. WAGNER.

vs.

JOHN R. STOLL, County Treasurer.

Extracts from the Statutes of South Carolina.

EXTRACTS

FROM

STATUTES OF SOUTH CAROLINA,

RELATING TO BANKS.

AN ACT *to incorporate the State Bank, and imposing certain restrictions on the Directors, Officers and Servants of Banks in this State.*

WHEREAS, John Blake, president, and David Alexander, John Kirk, Michael Jenkins, Thomas Shubrick, John Dawson, jr., William Allan, Theodore Gaillard, jr., Wade Hampton, Daniel Doyley, Thomas Ogier, Robert J. Turnbull and Morton Waring, directors of the State Bank, in the city of Charleston, have, on behalf of themselves and the other stockholders in the said Bank, set forth, in their memorial to the Legislature, that they cannot accept of the charter heretofore granted unto them, in and by an Act of the Legislature, passed the last session, for the reasons in their said memorial particularly set forth and contained; *and whereas*, the Legislature, upon due consideration of the said reasons, have deemed the same satisfactory, and have accordingly deemed it expedient to repeal the said Act as far as it relates to the said Bank, and to associate with, and to incorporate the said Bank, upon other terms more advantageous to the members or stockholders of the same. * * *

V. *And be it further enacted*. That the following rules, limitations and provisions, shall form and be fundamental articles of the constitution of the said corporation:

RULE 1st. The capital stock of the Bank shall consist of eight thousand shares of one hundred dollars each, making the sum of eight hundred thousand dollars; three thousand shares whereof be subscribed by the State, as hereinafter directed. * * * *

XI. *And be it further enacted* by the authority aforesaid, That it shall and may be lawful for the comptroller General of finances of this State, or in case of the abolition of his office, or of his death, resignation or absence from the State, for the person or persons who may be hereafter appointed by the Legislature for the purpose, and he or they are hereby authorized and required, to cause a subscription of three hundred thousand dollars to be made to the stock of the said corporation or bank, as part of its capital; and that the said sum of three hundred thousand dollars, so to be subscribed, be paid to the said Bank, under and by direction of the Comptroller or

person or persons hereinbefore mentioned, as the case may be, in a certificate or certificates, as may be found most convenient, bearing an interest of six per cent. per annum, payable quarter yearly from the first of January next; which certificate or certificates, the president and directors of the said corporation shall, if they think proper, sell and dispose of, in part or in whole for the use of the said corporation, whenever they see fit so to do; and the faith of the State is hereby pledged, together with the debt of the United States due thereto, for the redemption of the interest and principal of the certificate or certificates so to be issued. * * *

XVI. *And be it further enacted*, That the bills or notes of the said corporation, originally made payable, or which shall have become payable on demand, in gold or silver coin, shall be receivable at the treasury of this State, either at Charleston or Columbia; and by all tax collectors, and other public officers, in all payments for taxes, or other moneys due to the State; and the public moneys of the State, payable at the lower division of the treasury, shall be constantly deposited for safe keeping in the said Bank.

* * * * *

Passed 18th Dec., 1802. 8 Stat. at Large, p. 6.

AN ACT *to incorporate the Union Bank of South Carolina.*

WHEREAS, Charles B. Cochran, president, and the directors of the said Bank, have petitioned the Legislature, that they, and the stockholders of said Bank, may be incorporated, under the name of "The Union Bank of South Carolina." And *whereas*, it is deemed expedient and proper that the said company be incorporated.

I. *Be it therefore enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That Charles B. Cochran, president, John J. Bulow, Langdon Cheves, Alexander Henry, John Williamson, Robert Maxwell, J. E. A. Steinmitze, Fidele Boisgerard, William Boyd, William Broadfoot, John Geddes, Richard Cunningham, and William Wightman, directors, with all such persons as now are or may hereafter become stockholders in the said company, be, and they are hereby incorporated, and made a corporation and body politic, by the name and style of the "Union Bank of South Carolina." * * * * * *

XII. *And be it further enacted* by the authority aforesaid, That the bills or notes of the said corporation originally made payable, or which shall have become payable, on demand in gold or silver coin, shall be receivable at the treasury of this State, either at Charles-

ton or Columbia, and by all tax collectors and other public officers, in all payments for taxes or other moneys due to the State, during the term for which said company is hereby incorporated. * * * *

XIV. *And be it further enacted* by the authority aforesaid, That this Act shall be in full force for twenty-one years, and no longer.

Passed 20th Dec., 1810. 8 Stat. at Large, p. 14.

AN ACT *to incorporate the Planters' and Mechanics' Bank of South Carolina.*

It is deemed beneficial to the citizens of this State, a Bank under the name of the Planters' and Mechanics' Bank, should be established in the city of Charleston, which shall also be authorized to establish branches in different parts of this State.

X. *And be it further enacted* by the authority aforesaid, That the Bank hereby intended to be incorporated, shall not be so incorporated, or derive any benefit or advantage from any of the clauses or provisions in this Act contained, unless it shall transfer, or cause to be transferred, to the treasurer of the lower division, for the benefit of the State, eight hundred shares of the stock of the said Bank, on or before the first day of November next.

* * * * *

Passed 20th Dec., 1810. 8 Stat. at Large, p. 18.

AN ACT *for amending the Charter of the Planters' and Mechanics' Bank of South Carolina; and for other purposes therein mentioned.*

Whereas, at the time of incorporating the Planters' and Mechanics' Bank of South Carolina, several clauses and provisions embraced in the charters of other banks in this State, were omitted; for remedy whereof, * *

IV. *And be it further enacted* by the authority aforesaid, That the bills or notes of said Planters' and Mechanics' Bank, originally made payable, or which shall have become payable on demand, in gold or silver coin, shall be receivable at the treasury of State, either at Charleston or at Columbia, and by all tax collectors, and other public officers, in all payments for taxes or other moneys due to the State, during the term for which the said company is incorporated.

* * * * *

Passed 21st Dec., 1811. 8 Statutes at Large, p. 22.

AN ACT *to establish a Bank, on behalf of and for the benefit of the State.*

WHEREAS, it is deemed expedient and beneficial, both to the State and to the citizens thereof, to establish a bank on the funds of the State, for the purpose of discounting paper, and making loans for longer periods than has heretofore been customary, and on security different from what has hitherto been required.

I. *Be it therefore enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That a bank shall be established in the name and on behalf of the State of South Carolina, in the manner and on the conditions and limitations hereinafter expressed.

RULE 1st. All the Stock belonging to the State, of all descriptions whatsoever, whether six per cent. stock of the United States, three per cent. stock, loan office bonds, shares in the State Bank, and in the Planters' and Mechanics' Bank, and all bonds and notes due the State, shall constitute and form the capital of the said Bank, and shall be vested in the President and Directors, to be appointed as hereinafter prescribed, and their successors. And the faith of the State is hereby pledged for the support of the said bank, and to supply any deficiency in the funds specially pledged, and to make good all losses arising from such deficiency. * * *

RULE 6th. The total amount of the debts which the said corporation shall at any time owe, whether by bond, bill, note or contract, shall not exceed twice the amount of its capital, over and above the moneys then actually deposited in the bank for safe keeping, unless the contracting of any greater debt shall have been previously authorized by a law of this State. In case of excess, the directors under whose administration it shall happen, shall be liable for the same in their private capacities, and an action of debt may, in such case be brought against them, or any of them, their, or any of their heirs' executors or administrators, in any court of this State having jurisdiction, by any creditor or creditors of the said corporation, and may be prosecuted to judgment and execution ; any condition, covenant and agreement to the contrary notwithstanding. But this shall not be construed to exempt the said bank, or the lands, tenements, goods or chattels, of the same, and, on their insufficiency, the State of South Carolina, from being also liable for, and being chargeable with the said excess. *

RULE 7th. Immediately after the passing of this Act, the Legislature shall proceed to elect, by joint ballot, a president and twelve directors, to manage and conduct the business of the said bank ; and all future elections of a president and directors shall be by joint ballot of the Legislature.

RULE 16th. This bank is hereby incorporated and made a corporation and body politic, by the name and style of "The President and Directors of the Bank of the State of South Carolina," and so shall continue until the first day of May, one thousand eight hundred and thirty-five; and by that name shall be, and are hereby made, able and capable in law, to have, purchase, receive, possess, enjoy, and retain, to them and their successors, lands, rents, tenements, hereditaments, goods, chattels, and effects, of what kind, nature or quality soever, and the same to sell, grant, demise, alien or dispose of; to sue and be sued; plead and be impleaded; answer and be answered; defend and be defended, in courts of record, or any other place whatsoever; and also, to make, have and use a common seal, and the same to break, alter and renew at their pleasure. And also, to ordain, establish and put in execution such by-laws, ordinances and regulations, as shall seem necessary and convenient for the government of the said corporation, not being contrary to law or the constitution thereof; and generally, to do and execute all and singular, such acts, matters and things, which to them it shall or may appertain to do; subject nevertheless, to the rules, regulations, restrictions, limitations and provisions prescribed in this Act.

RULE 17th. The president and directors shall have power to issue notes, signed by the president and countersigned by the cashier, not under the denomination of one dollar, on behalf of the said corporation, for such sums, and with such devices, as they may deem most expedient and safe. They shall also be capable of exercising such other powers and authorities as may be necessary for the well governing and ordering the affairs of the said corporation, and of promoting its interest and its credit; any law, usage or custom to the contrary notwithstanding.

XIII. *And be it further enacted* by the authority aforesaid, That the president and directors shall have full power and authority to sell out, at their discretion, any share or shares which the State now holds, or may hereafter hold, in any bank within this State, or to negotiate foreign bills of exchange.

XVI. *And be it further enacted by the authority aforesaid, That the bills or notes of the said corporation, originally made payable, or which shall have become payable on demand, in gold or silver coin, shall be receivable at the treasury of this State, either at Charleston or Columbia, and by all tax collectors and other public officers, in all payments for taxes or other moneys due to the State.*

* * * * *

Passed 19th Dec., 1812. 8 Statutes at Large, p. 24.

AN ACT *to explain and amend an Act entitled "An Act to establish a Bank, on behalf of and for the benefit of the State."*

WHEREAS, the Act entitled "An Act to establish a bank, on behalf of and for the benefit of the State," requires sundry alterations and amendments. * * *

II. *And be it further enacted* by the authority aforesaid, That the comptroller be, and he is hereby, authorized and directed to transfer to the bank, on account of capital, on the second day of April, 1814, all moneys received in the course of the preceding year, and remaining in the treasury on the second of April in each and every year. * * * * *

IV. *And be it further enacted* by the authority aforesaid, That no bank or banks, other than the bank of the State of South Carolina, shall issue or put into circulation bills of a lower denomination than five dollars; any Act, or clause of any Act, to the contrary notwithstanding.

VI. *And be it further enacted* by the authority aforesaid, That from and after the passing of this Act, the Legislature shall annually elect, by joint ballot of both branches, a president and twelve directors, whose services shall commence on the first day of February next ensuing such election, and continue for one year.

* * * * *

Passed 18th Dec., 1813. 8 Statutes at Large, p. 31.

AN ACT *to renew the Charter of the State Bank, and the Bank of South Carolina; and for other purposes therein mentioned.*

I. *Be it enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That the charters of the State Bank, and Bank of South Carolina, be, and the same are hereby renewed, for and during the term of twelve years, from the thirty-first day of December, instant.

II. *And be it enacted* by the authority aforesaid, That the State Bank, and Bank of South Carolina, shall be, and they are hereby, permitted to enjoy all the privileges, powers, immunities and benefits, which they now enjoy under their charters; and be subject to all the restrictions imposed by the said charters.

III. *And be it enacted* by the authority aforesaid, That the said State Bank, and Bank of South Carolina, for the charters renewed and extended, shall, on the first

day of February next, pay into the treasury of the lower division of this State, a *bonus*, each, of twenty thousand dollars, for the charters hereby renewed and extended.

* * * * *

Passed 21st Dec., 1822. 8 Stat. at Large, p. 39.

AN ACT *to renew the Charter of the Planters' and Mechanics' Bank, and of the Union Bank of South Carolina.*

I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That the charters of the Planters' and Mechanics' Bank of South Carolina, and of the Union Bank of South Carolina, be, and the same are hereby renewed, for and during the term of twenty-one years, from the day on which the original charters of the said banks, respectively, will expire.

II. *And be it further enacted* by the authority aforesaid, That the said Planters' and Mechanics' Bank, and Union Bank of South Carolina, during the said term of twenty-one years, be, and they are hereby, permitted and authorized to exercise and enjoy all the privileges, rights, powers, immunities and benefits which they now exercise and enjoy under their respective charters, or with which they are or have been invested, respectively, by any Act of the General Assembly of this State now in force; and shall also be subject, respectively, to all the restrictions imposed by any such Act of Assembly.

III. *And be it further enacted* by the authority aforesaid, That the said Planters' and Mechanics' Bank, and the said Union Bank, respectively, for the charters so renewed and extended, shall, on the first day of February next, after the expiration of their present charters, respectively, pay into the treasury of the lower division of this State, a bonus, each, of twenty-five thousand dollars.

* * * * *

Passed 18th Dec., 1830. 8 Stat. at Large, p. 57.

AN ACT *to renew the Charter of the State Bank.*

I. *Be it enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That the charter of the State Bank be, and the same is hereby renewed, for the term of twenty-one years, from the expiration of its present charter; and the said corporation is hereby permitted and authorized to enjoy and to exercise all the privileges, rights, powers, immunities and benefits which it now exercises and enjoys, under its present charter, or any Act of the General Assembly of

this State; and be subject, also, to every restriction imposed on the same by law. *Provided*, the said corporation do, on or before the first day of the February next, after the expiration of its present charter, pay into the treasury of the lower division, *the sum of twenty thousand dollars, as a bonus;* and *provided also*, that the stockholders do, on or before the first day of February, make up the deficiency in the capital stock of said company, and produce satisfactory proof thereof to the Comptroller General, the president of the Bank of the State, and the treasurer of the lower division, who are hereby directed to report the same to the Legislature at its next sitting thereafter. * * * * *

Passed 19th December, 1833. 8 Stat. at large, p. 67.

AN ACT *to re-charter the Bank of the State of South Carolina.*

WHEREAS, it is deemed expedient and beneficial, both to its citizens and the State, to re-charter the Bank of the State of South Carolina.

I. *Be it therefore enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, *That an Act entitled "An Act to establish a bank, on behalf of and for the benefit of the State," passed on the nineteenth day of December, in the year of our Lord one thousand eight hundred and twelve, and all other Acts now of force relating to the conduct and operations of the said bank, be, and they are hereby*, RE-ENACTED AND CONTINUED OF FORCE UNTIL THE FIRST DAY OF MAY, IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FIFTY-SIX.

And be it further enacted, That the said corporation shall neither issue nor put into circulation any note for less than one dollar; and shall call in and withdraw from circulation all bills heretofore issued by it, of a lesser denomination than one dollar, as soon as the same can be conveniently done.

III. *And be it further enacted*, That the Act of the General Assembly, passed on the seventeenth day of December, one thousand eight hundred and sixteen, establishing a branch of the Bank of the State of South Carolina at Georgetown, be, and the same is hereby repealed; and that the said branch be discontinued, and that an agency be established at that place, in lieu of said branch.

In the Senate House, the nineteenth day of December, in the year of our Lord one thousand eight hundred and thirty-three, and the fifty-eighth year of the Sovereignty and Independence of the United States of America.

8 Statutes at Large, p. 67.

AN ACT *to extend the Charter of the Bank of the State of South Carolina.*

I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That from and after the expiration of the present charter of the Bank of the State of South Carolina, the same shall be, and is hereby extended until the first day of January, which shall be in the year of our Lord, one thousand eight hundred and seventy-one.

II. That the said Bank shall not have authority at any time to make any subscription to the capital stock of any Rail Road or other work of internal improvement within or without the limits of this State, unless by the permission of the Legislature.

III. That the fifth section of an Act, entitled "An Act to establish a Bank, on behalf of and for the benefit of the State," be and the same is hereby repealed.

IV. It shall not be lawful for said Bank, except in settlements with other Banks, to pay, or deliver out in payment or satisfaction of any demand upon it, or by way of loan or discount, any bill, note, check or other paper of any other Bank.

V. That it shall be the duty of the President and Directors of the said Bank, whenever any part of the funded debt of the State, (except the three per cent. stock,) can be purchased at or under par, to purchase the same on account of the sinking fund; and hereafter, the profits of the Bank, as they are annually ascertained and carried to the credit of the sinking fund, shall be disposed of in the following manner, that is to say: They shall be invested in the purchase of the funded debt of the State, (except the three per cent. stock;) *Provided*, the same can be obtained at or under par. And in case the said profits, or any part thereof, cannot be invested as aforesaid, within six months after having been ascertained and carried to the credit of the sinking fund, then it shall be the duty of the President and Directors of the Bank to invest the same in the purchase of the three per cent. stock of the State: *Provided*, the same can be obtained at a rate not exceeding sixty-four per cent., or in bonds, notes, or other obligations made payable not more than six months after date, and secured by pledge of three per cent. stock of the State, at a rate not exceeding sixty-four per cent., or other funded debt of the State not above par, or other good and safe stocks readily convertible into cash, which shall be taken at a rate not exceeding ninety per cent. of their par value; and also not exceeding ninety per cent. of the current price at which they are saleable at the time of taking such pledge. And it shall also be the duty of the said President and Direct-

ors to cause the account of the sinking fund to be kept in such manner as to show at all times what particular bonds, notes, stocks and other securities belong to the said fund.

VI. That from and after the first day of July next any person or persons, corporation or body politic, who shall within this State, directly or indirectly, pay out, pass or put in circulation, or cause to be paid out, passed or put in circulation, any bank note, bill, certificate or acknowledgment of indebtedness, whatsoever, purporting to be a bank note, or of the nature, character or appearance of a bank note, of a less amount or denomination than five dollars, issued or purporting to be issued, by any bank, or person or association of persons, in any other State, shall be subject to the payment of twenty dollars to be recovered by action of debt at the suit of the State, and appropriated one-half to the informer, and the other to the maintenance and repair of the public buildings in the District where the action is brought.

In the Senate House, the sixteenth day of December, in the year of our Lord, one thousand eight hundred and fifty-two, and in the seventy-seventh year of the Sovereignty and Independence of the United States of America. 12 Stat. at Large, p. 149.

AN ACT

TO CLOSE THE OPERATIONS OF THE BANK OF THE STATE OF SOUTH CAROLINA.

* * * * *

SEC. 4. *That the sixteenth Section of the Act, ratified the 19th day of December*, 1812, *entitled "An Act to establish a Bank on behalf of and for the benefit of the State," and all Acts and parts of Acts which render the bills of said corporation receivable in payment of taxes and all other debts due the State, be, and the same are HEREBY REPEALED.*

* * * * *

Passed 15th Sept., 1868. 14 Stat. at Large, p. 22.

AN ACT *to re-charter the Planters' and Mechanics' Bank of South Carolina, the Union Bank of South Carolina, the Commercial Bank of Columbia, South Carolina, and to incorporate the Exchange Bank of Columbia, the Farmers' and Exchange Bank and the People's Bank of Charleston, the Bank of Newberry, the Bank of Chester, the Bank of Sumterville, the Planters' Bank of Fairfield, and the Western Bank of South Carolina at Anderson:*

I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by

the authority of the same, That the charter of the Planters' and Mechanics' Bank of South Carolina, be and the same is hereby renewed for the term of twenty-one years from and after the first day of January next, which will be in the year of our Lord one thousand eight hundred and fifty-three. * * * *

VI. The bills or notes of the said Bank shall be receivable by the Treasurers, Tax Collectors, and other public officers, in payment for taxes and other moneys due to the State, no longer than while the said Bank shall promptly pay, on demand, gold and silver current coin for their notes; but whenever the said Bank shall refuse or delay to pay any of their notes in gold or silver current coin, or whenever there shall be a protest on any of the bills or notes of the said Bank for non-payment in specie, it shall be the duty of the Comptroller General to forbid the receipt of the bills or notes of the said Bank for taxes and other public dues, unless satisfactory reasons be shewn him by the said Bank for contesting, in a Court of justice, the payment of such protested bills or notes.

VII. That the charters of the Union Bank of South Carolina, and the Commercial Bank of Columbia, South Carolina, be also renewed, from the period at which their charters respectively expire, for the same time and with the same rights, privileges and obligations, and subject to the same regulations and restrictions as herein before provided in relation to the said Planters' and Mechanics' Bank.

VIII. That the following eight Banks are hereby incorporated, to be named and known as follows, to wit: One in Columbia, to be known as the "Exchange Bank of Columbia," with a capital of five hundred thousand dollars, and with the priviledge of increasing it to one million; one at Charleston, to be known as the "Farmers and Exchange Bank of Charleston," with a capital of one million of dollars; one at Chester, to be styled the "Bank of Chester, South Carolina," with a capital of three hundred thousand dollars; one at Newberry, to be styled the "Bank of Newberry, South Carolina," with a capital of three hundred thousand dollars; one at Winnsboro', to be styled the "Planters Bank of Fairfield," with a capital of three hundred thousand dollars; one at Anderson, to be styled the "Western Bank of South Carolina," with a capital of three hundred thousand dollars; one at Sumterville, to be styled the "Bank of Sumterville," with a capital of three hundred thousand dollars; and one at Charleston, to be styled the "People's Bank of South Carolina," with a capital of one million dollars; which said Banks shall have and possess the same rights and privileges, and be subject to the same duties, liabilities, obligations, regulations, and restrictions herein provided for the said Planters' & Mechanics'

Bank, and Union Bank and Commercial Bank. The capital stock of each of the said eight Banks shall be divided into shares of twenty-five dollars each.

* * * * * *

Passed 16th December, 1852. 12 Stat. at Large, p. 212.

AN ACT *to renew and amend the Charter of the State Bank.*

I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That the charter of the State Bank be, and the same is hereby renewed for the term of twenty-one years from the expiration of its present charter. * * * * * * *

VI. The bills or notes of the said Bank shall be receivable by the Treasurers, Tax Collectors and other public officers, in payment for taxes and other moneys due to the State no longer than while the said Bank shall promptly pay on demand, gold and silver current coin for their notes; but whenever the said Bank shall refuse or delay to pay any of their notes in gold or silver current coin, or whenever there shall be a protest on any of the bills or notes of the said bank for non-payment of specie, it shall be the duty of the Comptroller General to forbid the receipt of the bills or notes of the said Bank for taxes and other public dues, unless satisfactory reasons be shown him by the Bank for contesting, in a court of justice, the payment of such protested bills or notes. * * *

Passed 20th Dec. 1853, 12 Stat. at large p. 243.

THE COMMERCIAL BANK OF COLUMBIA, SOUTH CAROLINA.

AN ACT *to establish and incorporate a Bank in the town of Columbia.*

19th. That the bills or notes of the said corporation, originally made payable on demand, or which shall have become payable, in gold or silver, current coin, shall be receivable by the treasurers, tax collectors, solicitors, and other public officers, in all payments for taxes, or other moneys due to the State, so long as the said bank shall pay gold and silver, current coin, for their notes; but whenever there shall be a protest on any of the bills or notes of the said Bank for non-payment of specie, the comptroller-general shall be authorized, and he is hereby required, to countermand the receipt of the bills and notes of the said bank in payment of taxes or debts due to the State, unless good and satisfactory cause shall be shown him by the said corporation, for protesting in a court of justice the payment thereof.

* * * * *

Passed 17th Dec., 1831. 8 Stat. at Large, p. 58.

THE MERCHANTS' BANK OF SOUTH CAROLINA, AT CHERAW.

AN ACT *to incorporate a Bank in the Town of Cheraw.*

SEC. XIX. That the bills or notes of said corporation, originally made payable on demand, or which shall have become payable, in gold or silver, current coin, shall be receivable by the treasurers, tax collectors, solicitors, and other public officers, in all payments for taxes or other moneys due to the State, so long as said bank shall pay gold and silver current coin for their notes. But whenever there shall be a protest on any of the bills or notes of said bank, for non-payment in specie, the comptroller-general shall be authorized, and is hereby required to countermand the receipts of the bills and notes of the bank, in payment of taxes and debts due to the State, unless good and satisfactory cause shall be shown him by the said corporation, for contesting, in a court of justice, the payment thereof.

* * * * *

Passed 19th Dec., 1833. 8 Stat. at Large, p. 68.

THE BANK OF CHARLESTON, SOUTH CAROLINA.

AN ACT *to establish and incorporate another Bank in the City of Charleston.*

SEC. XXI. The bills or notes of the said corporation, originally made payable, on demand, or which shall become payable, in gold or silver, current coin, shall be

received by the treasurers, tax collectors, solicitors, and other public officers, in all payments for taxes, or other moneys due to the State, so long as the said bank shall pay gold and silver, current coin, for their notes; but whenever there shall be a protest on any of the bills or notes of the said bank, for non-payment in specie, the comptroller-general shall be authorized, and he is hereby required, to countermand the receipt of the bills and notes of the said bank, in payment of taxes or debts due to the State, unless good and satisfactory cause be shown him by the said corporation, for protesting, in a court of justice, the payment thereof.

* * * * *

Passed 17th Dec., 1834. 8 Stat. at Large, p. 74.

THE BANK OF CAMDEN, SOUTH CAROLINA.

AN ACT *to incorporate a Bank in the Town of Camden.*

SEC. XIX. That the bills or notes of the said corporation, originally made payable, on demand, or which shall become payable, in gold or silver, current coin, shall be receivable by the treasurers, tax collectors, and solicitors and other public officers, in all payments for taxes or other moneys due to the State, so long as said bank shall pay gold and silver, current coin, for their notes. But whenever there shall be a protest on any of the bills or notes of said bank, for non-payment in specie, the comptroller-general shall be authorized, and is hereby required to countermand the receipt of the bills or notes of the bank, in payment of taxes or debts due to the State, unless good and satisfactory cause shall be shown him by the said corporation, for contesting, in a court of justice, the payment thereof.

* * * * *

Passed 19th Dec., 1835. 8 Stat. at Large, p. 79.

THE BANK OF HAMBURG, SOUTH CAROLINA.

AN ACT *to establish and incorporate a Bank in the Town of Hamburg.*

SEC. XIX. That the bills or notes of the said corporation, originally made payable, on demand, or which shall have become payable, in gold or silver, current coin, shall be receivable by the treasurers, tax collectors, solicitors, and other public officers, in all payments for taxes, or other moneys, due the State, so long as the bank shall pay gold or silver, current coin, for their notes; but whenever there shall be a protest on any of the bills or notes of the said bank, for non-payment in specie, the comptroller-general shall be authorized, and he is hereby required, to countermand the receipt of the bills and

notes of said bank, in payment of taxes or debts due to the State, unless good and satisfactory cause shall be shown him by the said corporation, for protesting, in a court of justice, the payment thereof.

* * * * *

Passed 19th Dec., 1835. 8 Stat. at Large, p. 85.

THE BANK OF GEORGETOWN, SOUTH CAROLINA.

AN ACT *to establish and incorporate a Bank in the Town of Georgetown.*

SEC. XIX. That the bills or notes of the said corporation, originally made payable, on demand, or which shall have become payable, in gold or silver, current coin, shall be receivable by the treasurers, tax collectors, solicitors, and other public officers, in all payments for taxes or other moneys due the State, as long as the said bank shall pay gold and silver, current coin, for their notes; but whenever there shall be a protest on any of the bills or notes of the said bank, for non-payment in specie, the comptroller-general shall be authorized, and he is herby required, to countermand the receipt of the bills and notes of said bank, in payment of taxes or debts due to the State, unless good and satisfactory cause shall be shown him, by the said corporation, for protesting, in a court of justice, the payment thereof.

* * * * *

Passed 21st Dec., 1836. 8 Statutes at Large, p, 91.

THE SOUTHWESTERN RAILROAD BANK.

AN ACT *to confer Banking Privileges on the Stockholders of the Louisville, Cincinnati and Charleston Railroad Company, on certain terms and conditions.*

SEC. XXVI. The notes of the said bank shall be receivable at the treasuries of the said several States in which it is chartered, in payment of public dues, as long as the said bank shall redeem its notes with specie.

* * * * *

Passed 21st Dec., 1836. 8 Stat. at Large, p. 96.

EXTRACTS

FROM

STATUTES OF SOUTH CAROLINA,

RELATING TO

"ACTS TO RAISE SUPPLIES" ANNUALLY.

AN ACT *to raise Supplies for the year* 1813, *and for other purposes therein mentioned.*"

1. *Be it enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That a tax, for the sums and in the manner hereinafter mentioned, shall be raised, and paid into the public treasury of this State, and for the use and service thereof.

* * * * *

SEC. 6. "That the tax collectors throughout this State shall receive no payment of taxes but in gold or silver coin, made current in this State, the paper medium issued under the authority of the Legislature, bank paper redeemable in the first instance in gold and silver at the Bank of South Carolina, the State Bank, Union Bank, the Planters' and Mechanics' Bank, the Bank of the State of South Carolina, or certificates for the payment of members of the Legislature, or the solicitors for their attendance on the Legislature." (Tax Act of 1813.)

5 Stats. at Large, p. 705.

AN ACT *to raise Supplies for the year* 1814, *&c.*

SECTIONS 1 and 6, same as above.

5 Stat. at Large, p. 730.

AN ACT *to raise Supplies for the year* 1815.

I. *Be it enacted* by the Honorable the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That a tax, for the sums and in the manner hereinafter mentioned, shall be raised, and paid into the public treasury of this State, and for the use and service thereof.

II. *And be it further enacted* by the authority aforesaid, That forty-five cents, *ad valorem*, on every hundred dollars, *be paid in specie paper medium, or in notes of the incorporated banks of the State of South Carolina, on* all lands granted within this State.

III. *And be it further enacted* by the authority aforesaid, That one dollar per head shall be levied upon all slaves, of all ages and descriptions; and the sum of two dollars per head upon all free negroes, mulattoes and mestizoes, (except such as shall be clearly proven to the collectors to be incapable, from maims or otherwise, of providing a livelihood) between the ages of fifteen and fifty, and forty-five cents *ad valorem* on every hundred dollars of the value of all lots and lands and buildings within any city, town, village or borough; and one dollar per hundred dollars, on all stock in trade, factorage, employments, faculties and professions, (clergymen, schoolmasters, schoolmistresses and mechanics excepted) to be ascertained and rated by the assessors and collectors throughout the State, according to the best of their knowledge and information; *to be paid in paper medium, the notes of the banks of the State of South Carolina, or specie.*

* * * * *

6 Stat. at Large, p. 19.

AN ACT *to raise Supplies for the year* 1816.

SECS. I, II and III, same as for the year, 1815. * *

6 Statutes at Large, p. 45.

AN ACT *to raise Supplies for the year* 1817.

SECS. I, II and III. Taxes payable in same currency as for the year 1815.

6 Statutes at Large p. 80.

AN ACT *to raise Supplies for the year* 1818.

SECS. I, II and III. Taxes payable in same currency as for the year 1815.

6 Statutes at Large, p. 107.

AN ACT *to raise Supplies for the year* 1819.

SECS. I, II and III. Taxes payable in same currency as for the year 1815.

6 Statutes at Large, p. 131.

AN ACT *to raise Supplies for the year* 1820.

SECS. I, II and III. Taxes payable in same currency as for the year 1815.

6 Statutes at Large, p. 149.

AN ACT *to raise Supplies for the year* 1821.

SECS. I, II and III. Taxes payable in same currency as for the year 1815.

6 Statutes at Large, p. 170.

AN ACT *to raise Supplies for the year* 1822.

SEC. I. Taxes payable in same currency as for the year 1815.

6 Statutes at Large, p. 195.

AN ACT *to raise Supplies for the year* 1823.

SEC. I. * * * Taxes payable in same currency as for the year 1815.

6 Statutes at Large p. 223.

AN ACT *to raise Supplies for the year* 1824.

SEC. I. * * * Taxes "to be paid in specie, paper medium or the notes of the Banks of this State." * *

6 Statutes at Large, p. 251.

AN ACT *to raise Supplies for the year* 1825.

SEC. I. * * * Taxes, "to be paid in specie, paper medium or the notes of the Banks of this State." * *

6 Statutes at Large, p. 272.

AN ACT *to raise Supplies for the year* 1826.

SEC. I. * * * Taxes "to *be paid in specie, paper medium, or the notes of the specie paying banks of this State.*"

6 Stats. at Large, p. 293.

AN ACT *to raise Supplies for the year* 1827.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or the notes *of the specie paying banks of this State.*"

6 Stats. at Large, p. 344.

AN ACT *to raise Supplies for the year* 1828.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying banks of this State.*"

6 Stats. at Large, p. 373.

AN ACT *to raise Supplies for the year* 1829.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying banks of this State.*"

6 Stats. at Large, p. 400.

AN ACT *to raise Supplies for the year* 1830.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying banks of this State.*"

6 Stats. at Large, p. 420.

AN ACT *to raise Supplies for the year* 1831.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying banks of this State.*"

6 Stats. at Large, p. 447.

AN ACT *to raise Supplies for the year* 1832.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying banks of this State.*"

6 Stats. at Large, p. 474.

AN ACT *to raise Supplies for the year* 1833.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying banks of this State.*"

6 Statutes at Large, p. 497.

AN ACT *to raise Supplies for the year* 1834.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying banks of this State.*"

6 Statutes at Large, p. 517.

AN ACT *to raise Supplies for the year* 1835.

SEC. 1. * * * Taxes, "to be paid in specie, paper medium, or *the notes of the specie paying Banks of this State.*"

6 Statutes at Large, p. 540.

AN ACT *to raise Supplies for the year* 1836.

SEC. 1. * * * Taxas, "to be paid in specie, paper medium, or *the notes of the specie paying Banks of this State.*"

6 Statutes at Large, p. 560.

AN ACT *to raise Supplies for the year* 1837.

SEC. 1. * * * Taxes "to be paid in specie, paper medium, or *the bills of the Banks of this State;* and if any bank of this State shall, in the opinion of the Comptroller General, become unsafe, so that its bills ought not to be received at the treasury, it shall be his duty to order their reception to be discontinued by the tax collectors."

6 Statutes at Large, p. 584.

AN ACT *to raise Supplies for the year* 1838.

SEC. 1. * * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying Banks of this State.*"

6 Statutes at Large, p. 605.

AN ACT *to raise Supplies for the year* 1839.

SEC. 1. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying Banks of this State.*"

11 Statutes at Large, p. 1.

AN ACT *to raise Supplies for the year* 1840.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying Banks of this State.*"

11 Statutes at Large, p. 94.

AN ACT *to raise Supplies for the year* 1841.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying Banks of this State.*"

11 Statutes at Large, p. 143.

AN ACT *to raise Supplies for the year* 1842.

SEC. I. * * * Taxes "to be paid in specie, paper medium, or *the notes of the specie paying Banks of this State.*"

11 Statutes at Large, p. 211.

"AN ACT *prescribing the duties of certain officers in the collection of supplies, the payment of salaries, and for other purposes.*"

SEC. I. * * * That all taxes for the use and service of this State shall be paid

in specie, paper medium, or the notes of the specie paying Banks of this State. * * *

Passed 19 Dec., 1843. 11 Stats. at Large, p. 246.

AN ACT *to raise supplies for the year commencing in October*, 1857.

SEC. VIII. * * * That the Comptroller General shall direct the tax collectors and treasurers to receive the taxes and other dues to the State *only in* NOTES OF THE BANK OF THE STATE, or of specie paying Banks of this State, or of coin of the United States."

12 Stats. at Large, p. 595.

AN ACT

TO CLOSE THE OPERATIONS OF THE BANK OF THE STATE OF SOUTH CAROLINA.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, that the Governor of the State is hereby authorized and required, for and on behalf of the State, to take possession of all the real and personal estate, assets, choses in action, and books of accounts of the corporation known as "The President and Directors of the Bank of the State of South Carolina," in whose hands soever found, and sell at public auction, at such times, and upon such terms, as he shall deem most advantageous to the State, all real and personal estate, stocks, bondsof the corporation, and other assets of the said corporation and the personal bonds, notes and bills of exchange owned by said corporations; and all debts and choses in action due the said corporation, he shall place in the hands of the Attorney General of the State, with instructions to institute, in the name of the said corporation, legal proceedings to collect the amonnts so due as speedily as possible; and the proceeds of said sales, and of all collections made by the Attorney General, shall be deposited in the Treasury of the State, subject to the order of the Governor, who shall keep a distinct account thereof, separate and distinct from the other accounts of the State, and shall report the same to the next succeeding session of the Legislature: *Provided, always,* That suits shall not be instituted upon any debts which, in the opinion of the Governor and Attorney General, are valueless.

SEC. 2. *That all bills issued by said corporation prior to the twentieth day of December,* 1860, *be funded;* and on the surrender and delivery of said bills to the Treasury of the State, bonds of the State, payable within twenty years after date, with interest at six per cent. per annum, payable semi-annnally at the agency of the State in the city of New York, shall be issued to the owner of said bills, in payment and redemption of the amount of said bills, and interest thereon, from the time when such bills were presented for payment at six per cent. per annum: *Provided,* That said bills shall be presented to the Treasurer before January 1, 1869. And the Governor of the State is hereby authorized and required to execute and deliver said bonds, to be signed by him and countersigned by the Treasurer; and to the punctual payment of the principal and the interest of the said bonds the credit and faith of the State is hereby pledged: *Provided, also,* That said bonds shall not be presented to the bill-holders and executed before January 1, 1869.

SEC. 3. That the eleventh Section of the Act of the General Assembly of the State, ratified the 21st day of December, 1865, entitled "An Act to raise supplies for the year commencing in October, 1865," be, and the same is hereby repealed.

SEC. 4. *That the sixteenth Section of the Act, ratified the 19th day of December, 1812, entitled "An Act to establish a Bank on behalf of and for the benefit of the State," and all Acts and parts of Acts which render the bills of said corporation receivable in payment of taxes and all other debts due the State, be, and the same are HEREBY REPEALED.*

SEC. 5. The Governor of the State of South Carolina is hereby authorized to pay all expenses necessary to carry into effect the provisions of this Act out of any funds in the State Treasury not otherwise appropriated.

SEC. 6. All bonds or stocks authorized in this Act, or hereafter to be authorized, shall be of uniform character in design; and to secure this result, the Financial Agent in New York shall make all necessary arrangements for the same.

In the Senate House, the fifteenth day of September, in the year of our Lord one thousand eight hundred and sixty-eight.

L. BOOZER, President of the Senate.
FRANKIN J. MOSES, JR., Speaker House of Representatives.

Approved; ROBERT K. SCOTT, Governor.

OFFICE OF THE ATTORNEY GENERAL,
COLUMBIA, August 24, 1868.

Mr. Speaker and Gentlemen of the House of Representatives:

I am in receipt of a resolution of the House of Representatives, adopted on the 22d instant, in which I am requested to give my "Opinion, in writing, as to the legality of a Bill entitled, 'A Bill to close the operations of the Bank of the State of South Carolina.'"

The language of the resolution leaves me in some doubt upon which features of the Bill in question my opinion is specially desired. I shall, however, confine myself to the consideration of two questions which are involved in the Bill.

First. The liability of the State for the redemption of the Bills issued by the Bank of the State.

Second. The legality of the disposition proposed to be made by the pending bill of the assets and property of the Bank of the State.

To reach a correct answer to the first question, it is necessary to examine the legislation of the State in reference to the Bank, in order to determine the relation of the State to the Bank.

The Act incorporating the Bank of the State of South Carolina, and entitled "An Act to establish a Bank on behalf of and for the benefit of the State," was passed in 1812. In the preamble of this Act, it is recited, that "it is deemed expedient and beneficial both to the State and the citizens thereof to establish a bank on the funds of the State."

In the first section of the same Act, after a specification of the fnnds which shall constltute the capital of the Bank, it is added, "And the faith of the State is hereby pledged for the support of the said Bank, and to supply any deficiency in the fnnds specially pledged, and to make good all losses arising from such deficiency."

In the same section it is further directed, that "all the unexpended moneys in the treasuries of this State, and all the taxes hereafter to be collected on account of the State, shall be deposited in this bank to aid and facilitate the operations of the same. (Statutes at Large, Volume 8, page 24.)

By an Act passed in 1839, and entitled "An Act concerning the office, duties and liabilities of Sheriffs," and by an Act passed in 1840, and entitled "An Act to ascertain and determine the powers, duties and liabilities of Masters, Commissioners and Registers in Equity," &c., all Sheriffs, Masters and Commissioners in Equity were directed to deposit in the Bank of the State and its branches all moneys officially in their hands. (Statutes at Large, Vol. 11, p. 38, and Vol. 11, p. 113.)

By the sixteenth section of the Act of 1812, already referred to, it is further enacted, "that the bills and notes of the said corporation, originally made payable, or which shall have become payable on demand, in gold or silver coin, shall be receivable at the Treasury of this State, either at Charleston or Columbia, and by all Tax Collectors and other pnblic officers in all payments for taxes or moneys due the State."

By the terms of the Act of 1812, the officers of the Bank are made elective by the Legislature, the Bank is made liable to inspection by

the Legislature and Comptroller General, and the President and Cashier are required to report as often as may be required by the condition of the Bank.

From the citations already made, it is apparent that the State intended to identify herself with the Bank in the most intimate manner, and did so identify herself; establishing it for her own benefit; controlling it at her own discretion, and, above all, pledging to it and to its support the faith of the State.

Specific funds were set apart to constitute the capital of the Bank, but in addition to this the State adds the pledge of her own faith for its support.

The object of this pledge of the faith of the State is unmistakeable. It was to give to the Bank of the State an advantage to which no other Bank in the State could pretend. It was a distinct and solemn promise on the part of the State to those who should become the creditors of the Bank, that if the funds specifically pledged and set apart as the capital of the Bank, should prove insufficient from any cause to redeem its obligations, the State herself would supply all deficiencies and redeem all obligations. And the object of such a pledge was to establish beyond doubt the perpetual solvency of the Bank, and thus to enhance the *profits* of the Bank, to which the State alone was entitled.

That this is the proper construction of the statutes referred to is not less apparent from subsequent declarations of the Legislature than from the terms of the statutes themselves.

From a series of reports of legislative committees appointed to investigate the affairs of the Bank, it becomes clear that no other view was entertained of the relation of the State to the Bank.

The legislative committee appointed to examine the Bank in 1827 uses the following emphatic language: "The State is, indeed, so entirely identified with the Bank that the Legislature can not be too deeply sensible of the fact." . . . Let the people realize this truth as one vitally affecting the best interests of the State. Let them look to this Bank as bone of their bone and flesh of their flesh. Let them know that its fate, whether it be good or evil, is their fate.

In the report of a similar committee of the Legislature in 1847, we find the following expressions of the same view: "There is," say the committee, "another point of view in which this institution seems peculiarly valuable to the commercial relations of the State at large. *The State herself being the guarantee for its stability*, there is scarcely the possibility of the failure of the Bank. The consequence resulting from this feature is that it operates as a great and salutary check in times of commercial distress in the disastrous panics which at those periods occur. When distrust is abroad, and deposits and specie withdrawn on every side from private corporations, then the beneficial effects of an institution *under the guarantee of the State* is more particularly felt."

The same view of the relation of the State to the Bank will be reached by an examination of the sixth paragraph of the first section of the act of 1812, which is in these words: "The total amount of the debts which the said corporation shall at any time owe, either by bond, bill, note or contract, shall not exceed twice the amount of its capital over and above the moneys then actually deposited in the Bank for safe keeping, unless the contracting of a greater debt shall have been previously authorized by a law of the State; in case of excess the Directors, under whose administration it shall happen, shall be liable for the same in their individual capacities. . . .

But this shall not be construed to exempt the [illegible] tenements, goods or chattels of the same, *in their [illegible] State of South Carolina* from being also liable for and being chargeable with the said excess.

No stronger proof of the complete identification of the State with the Bank could have been given. Not only does she declare herself responsible for all lawful obligations of the Bank, but she expressly declares herself liable for debts contracted in direct violation of the charter and in express disregard of the authority of the State.

The State thus sought to silence and set at rest every doubt as to the perfect solvency of the Bank and the constant safety of those who should become her creditors. No responsibility could be more complete ; no language could be more unmistakeable.

An examination of the 16th section of the Act of 1812, *already recited which makes the bills of the Bank of the State receivable "in all payments for taxes and other moneys due to the State," will confirm this view, if additional confirmation is needed.*

It should be remembered that prior to the incorporation of the Bank of the State, the bills of other Banks within the State were also receivable in the same manner for taxes and debts due the State; but when subsequently to the chartering of the Bank of the State, the old Banks applied to be re-chartered, this provision was stricken out of their new charters, and the bills of the Bank of the State alone continued receivable for debts due the State. The bills of other Banks were receivable only so long as they were redeemable in specie; but the bills of the Bank of the State were receivable as specie, whether redeemable in specie or not.

Again, in 1857, *by Act of the Legislature, it was directed that "Tax collectors shall receive the taxes and other dues only in the notes of the Bank of the State, or of specie paying Banks of this State, or in coin of the United States." At this time (*1857*) not only had the other Banks suspended specie payments, but the Bank of the State had suspended specie payments also ; but notwithstanding the suspension, the Act directs that that the bills of the Bank of the State shall be receivable on the same basis as coin. The only possible grounds upon which this Act should have rested were, that the State was bound by the Act of* 1812 *to receive the bills of the Bank of the State in payment of taxes, and being herself the guarantee of the Bank, she was compelled to receive her own bills in satisfaction of her own claims.*

There are other arguments and other considerations which might be adduced to confirm the liability of the State for the bills of the Bank of the State, and for its obligations ; but it is not deemed necessary to spend more time upon this branch of the subject.

If we have reference to the strict terms of the several Acts of the Legislature already cited, to contemporaneous and subsequent construction by competent official authorities of such Acts, or to the unbroken practice under such Acts, we arrive at the same inevitable conclusion, to wit : *That the State by express language, by clear intention, and in reality, has made herself, in her own words, directly "liable for and chargeable with" all the debts of the Corporation known as the President and Directors of the Bank of the State of South Carolina.*

I come now to the examination of the second inquiry involved in the Bill submitted, namely : The legality of the disposition proposed to be made by the pending Bill, of the assets and property of the Bank of the State.

. . . . . .

the Legislature and his letter refers only to the right of the State Cashier are ree assets of the Bank, and pay the proceeds into the ~~treasury~~ of the State, as provided for in the annexed bill).

I have the honor to be, gentlemen,

Your most obedient servant,

D. H. CHAMBERLAIN,

Attorney General of South Carolina.

Supreme Court of the United States.

THE STATE, *ex rel.* JAMES ROBB, *et al.*
v.
WILLIAM GURNEY, COUNTY TREASURER. } No. 22.

THE STATE, *ex rel.* T. D. WAGNER
v.
JOHN R. STOLL, COUNTY TREASURER. } No. 23.

BRIEF OF DEFENDANTS IN ERROR ON REHEARING.

I. On the former hearing, the argument submitted for the defendants in error contained all that was believed to be necessary to a full presentation of these cases.

The substance of the former argument may be briefly stated:

The original charter of the Bank of the State of South Carolina provided, in its 16th section, as follows:

"That the bills or notes of the said corporation, originally made payable, or which shall have become payable, on demand, in gold or silver coin, shall be receivable at the treasury of this State, either at Charleston or Columbia, and by the tax collectors and other public officers, in all payments of taxes or other moneys due to the State."

By a series of acts annually passed by the Legislature of the State, from 1812 to 1843, the funds in which taxes might be paid in each year were specifically prescribed and enumerated.

In 1843, an act was passed entitled "An act prescribing the duties of certain officers in the collection of supplies,

the payment of salaries, and for other purposes;" and in the first section of this act are these words:

"That all taxes for the use and service of this State shall be paid *in specie, paper medium, or the notes of specie-paying banks of this State.*"

This act was a public act, intended to fix generally and permanently the kinds of funds in which taxes should be payable.

The annual acts for raising supplies continued to be passed in each year, but the enumeration of funds ceased from 1843 to 1857; and during this period, at least, the act of 1843 was the law of the State.

It was admitted that under the decision of *Furman* v. *Nichol*, 8 Wall., 44, all the bills of the Bank, issued while the 16th section, as now quoted, was in force or remained unchanged, carried with them at all times this guaranty of receivability for taxes, and that this guaranty was an inviolable and irrepealable contract, as to all bills issued while it remained unmodified, between the State and the holders of these bills.

It was further urged, that under the same decision the State might at any time put an end to the continuance of this guaranty as to *future* issues of bills by a proper declaration or notice to that effect. Accordingly, it was admitted that as to all issues of the Bank prior to the passage of the act of 1843, the guaranty continued in full force.

The act of 1843 was then compared with the 16th section of the charter of the Bank, and it was urged that they were found to be in conflict; that the guaranty of the 16th section of the charter made all bills of this Bank receivable for taxes, provided they were "originally made payable, or had become payable, on demand, in gold or silver coin;" that this guaranty referred not to the *fact* of their actual convertibility into coin on demand, but to the *form* of the obligation which the bills imported and embodied: while, on the other hand, the act of 1843 restricted the receivability of the bills issued thereafter to the condition that they

should be the "bills of specie-paying banks;" that, consequently, so long as the Bank remained a specie-paying bank, that is, a bank which actually redeemed its bills on presentation in gold or silver coin, its bills continued to be receivable for taxes under the act of 1843; but that, whenever the Bank ceased to redeem its notes in coin, these notes ceased to be receivable for taxes.

It was conceded that all the bills involved in these cases were issued after 1843, and that when they were tendered by the relators in payment of taxes, the Bank was not redeeming its bills in coin.

The conclusion was therefore reached, that no obligation rested on the State, as to these bills, to receive them for taxes; and hence that the judgments of the court below ought to be affirmed by this court.

This argument was, on the former hearing, elaborately opposed by the several counsel for the plaintiffs in error, and is again opposed by the same counsel in still more elaborate arguments.

II. It is not expected to do more than to restate the former argument in a slightly different form, and to notice the prominent objections now freshly urged against our conclusions.

That there is a conflict *in terms* between the 16th section of the act of 1812 and the 1st section of the act of 1843 is clear.

The former act makes all bills, which are payable by their terms in coin, receivable for taxes.

The latter act limits the bills which are receivable for taxes to those of *specie-paying* banks.

It is noticeable that the arguments of the plaintiffs in error seem nowhere to attempt to harmonize the *words* of the two acts. It must be admitted that they are in terms repugnant, the one to the other.

The whole effort of the plaintiffs in error is to show that the act of 1843 does not mean what it says: that its *words* do not express its *intent*.

No attempt is made to show that a *specie-paying* bank is any thing else than a bank which pays specie in redemption of its bills.

No attempt is made to show that the act of 1843 was not, in terms, imperative and exclusive, being an authoritative rule addressed to all tax collectors, and excluding all funds, except those therein specified.

Resort is had, not to the language of the statutes themselves, but to alleged facts, circumstances, and considerations outside of the statutes in question.

This is done, let it be observed, not to explain or construe the language of the act, but to defeat, to contradict, to absolutely set aside and nullify the language of the act. It is an attempt to show that when the act of 1843 says that *all* taxes shall be paid in the notes of *specie-paying* banks, they may be paid in the notes of the Bank of the State, *whether that Bank is specie-paying or not.*

The terms used in the act of 1843 are plain and clear. There is no ambiguity to explain; no doubt to solve; no allusion to be made plain. "Notes of *specie-paying banks*" is a phrase of almost transparent clearness. There is no occasion to resort to anything outside the words of the statute for explanation.

Before entering on an examination of the arguments drawn from sources other than the words of the statute itself, it seems proper to call attention to the great fact, that we have here, in support of the view of the defendants in error, the authority of two separate decisions of the highest court of the State: decisions given upon a question, too, which they were peculiarly qualified to decide. That court were personally and officially familiar with the entire history of this Bank. They knew by heart the facts and circumstances which are here relied on to support the present arguments of these plaintiffs in error. They knew the *policy* of the State, the relations between this Bank and the State; —none better.

The old Court of Errors was composed entirely of men

who had grown up during the very events which marked the history of this Bank. Yet in 1867 a court composed of such men solemnly decided that as matter of law, and in full view of all and more than all that this court can now be informed of touching these matters, the act of 1848 was a repeal of the 16th section of the charter of 1812. (*Graniteville Manuf. Co.* v. *Roper*, 15 Rich. L., 153.)

After the reconstruction of the State in 1868, the new and present Supreme Court of the State were again called to pass upon the same question, and after full argument, and after the fullest reference to all the considerations drawn from the history of this Bank, they again reached the same conclusion, and pronounced the judgments from which the present appeals are taken; namely, that the act of 1848 was a repeal of the 16th section of the charter, so far as to require that all bills tendered for taxes should be bills of *specie-paying* banks. (*Wagner* v. *Stoll*, 2 So. Ca., N. S., 558.

Those courts could not have mistaken the facts; they could not have been ignorant of any material consideration which should enter into the case. To hold, therefore, that they erred, is to hold that they failed to give due effect to considerations which they were peculiarly well-qualified and well-situated to pass upon.

This court will, however, reach its own conclusions on questions like the present. But it is respectfully urged that the repeated judgments of the highest courts of the State are entitled to peculiar weight in judging of arguments drawn so largely as those of the plaintiffs in error are, from a review of matters which pertain to the general financial history and management of the State in connection with this Bank.

It does not seem necessary to insist upon the positions, (1) that a repeal by implication is of the same force as a repeal by express words where the implication is plain; nor (2) that of two repugnant statutes, the later must pre-

vail; nor (3) that one statute may be repugnant to another in part, but not in whole; and (4) that in such case the later statute must prevail as to that part of the former statute to which it is repugnant.

These positions will be assumed.

We reiterate, then, in passing to the arguments of the plaintiffs in error, that we have at the outset a plain conflict, a distinct repugnancy, between the 16th section of the act of 1812 and the 1st section of the act of 1843, so far as the *words* of the two sections are concerned.

III. It is urged that this conflict was not intended by the Legislature, because the act of 1843 only specifies "taxes," whereas the act of 1812 specifies "taxes and other moneys due to the State." And it is urged that "it is unreasonable to presume a repeal of so much of the charter as makes its bills receivable for taxes, while such bills are receivable for other dues to the State."

Our first answer to this is, that we do not *presume* a repeal. We *find* a repeal—that is, we find a plain, manifest repugnance—and we are asked to *presume* that the Legislature did not mean what it said, because it did not say more. That is, stated in plain terms, we are asked to believe and hold that the Legislature did not mean to forbid the receipt of unredeemable bills for *taxes*, because they did not at the same time forbid their receipt for "other moneys due the State."

Grant that the Legislature were unreasonable, and that no good reason can now be assigned for excluding the one and not the other. Is that to change the plain meaning of words?

But it is not difficult to see a reason for the distinction. The taxes were the chief point to be guarded. They constituted the main portion of all the money paid to the State. It is certain that the suspension of specie-payment by the banks after 1843 was not regarded as imminent, and the comparative insignificance of the amount of "other

moneys due the State" may well have led the Legislature to content themselves with guarding against the obligation to receive the taxes, constituting nearly the entire income and resources of the State, in irredeemable bank-bills.

Certainly there is nothing contradictory or repugnant between these two acts. The exclusion of irredeemable bank bills in payment of taxes, and the failure to exclude them in payment of "other moneys due to the State."

IV. But it is said that the State was pledged to redeem all the bills of this Bank by virtue of the words in the charter of 1812: "And the faith of the state is hereby pledged for the support of said Bank, and to supply any deficiency in the funds specifically pledged, and to make good all losses arising from such deficiency."

Indeed, Judge Magrath goes so far as to say, "The State itself is bound to redeem these bills *in specie*, if the Bank should fail to do so." (Brief, p. 3.)

And this is presented as an argument to show that the Legislature could not have *intended* what it *said* in the act of 1843. The court will observe that the guaranty just quoted is a very carefully guarded one. Whether it amounted to a broad and general guaranty to discharge all the obligations and undertakings of the Bank may admit of doubt; but of this there can be no doubt, namely, that it was not a pledge to redeem its bills *in specie*.

But if it had been a pledge to redeem the bills *in specie*, it certainly was not a pledge, or an obligation of any kind, to receive them *for taxes*.

The exclusion of these bills, when not redeemed by the Bank in specie, from being received for taxes by the State, was in no sense and to no extent in conflict with the general guaranty of the Bank by the State.

The State could fulfil that guaranty in many other ways besides receiving its bills for taxes.

V. It is further said that the same words as are used in

act of 1843 are used in other acts, namely, in the annual supply acts from 1826 to 1836 inclusive, and from 1838 to 1842 inclusive; and it is urged that if the act of 1843 is a repeal of the 16th section of the charter, then the same words in the previous supply acts were a repeal also.

Whether a provision of an annual act, an act limited in its operation to a single year, could be held to work a repeal of that section, is a far different question from the one we are now considering. The purpose of the sections in question, in the annual supply acts, was to fix a rule for one particular year, and nothing more. The same words are repeated each year between the dates just mentioned. Whether these annual directions to the tax collectors, expiring as they did with the end of each year, could be held to be such a notice to the world of the termination of the unqualified guaranty contained in the 16th section of the charter as would in law be deemed sufficient, is more than doubtful.

But we may safely say that if the passage of a general act, containing a permanent rule of conduct for tax collectors in regard to the funds to be receivable for taxes, should be held to be a repeal of a former unqualified obligation to receive certain bills for taxes, it would by no means follow that an annual act, or a series of annual acts, each expiring with the year in which it was passed, would amount to such a repeal. At any rate, the effect of the annual acts prior to 1843, in which similar words occur, upon the contract contained in the 16th section of this charter, is a purely speculative question. The issue is not involved in these cases.

But whether the annual acts referred to were to be held to be or not to be a repeal or modification of the 16th section of the charter, the effect of the act of 1843 would not be changed. If those acts were held to be a repeal, then *a fortiori* would the permanent act of 1843 be so held. Or if those acts were held not to be a repeal, it would scarcely affect the question of the force of a permanent and continuing act like the act of 1843.

The true inquiry is not what was the effect of the annual acts prior to 1843. Our claim in these cases is simply that the act of 1843, prescribing a permanent rule to tax collectors, and excluding the bills of all banks not redeeming their bills in *specie*, is in plain conflict with the previous act, which placed no restriction on the receipt of the bills of the Bank of the State, and it does not negative this claim to show either that former annual acts did or did not repeal or modify, *pro tempore*, the same previous act.

VI. The attention of the court is called, in the brief of the plaintiffs in error, filed on this rehearing, to the action of the State in respect to the other banks: the banks which we call private banks, in contrast with this Bank of the State.

The case of the Planters and Mechanics' Bank is selected as an illustration. Let us look carefully at the case of that bank.

By its charter, granted in 1811, the bills of this bank were made receivable for taxes and other moneys due to the State, "*during the term for which the said company is incorporated.*"

In 1830 its charter is renewed without change, and with an express renewal of former rights and privileges. It so continued until 1852. By the express terms of the charter, the receivability of its bills for taxes continued *so long as the charter continued.*

The charter continued till 1852, as we have already said. This bank suspended specie payment in 1840, and thus its charter became subject to forfeiture by due process of law, but the forfeiture was not enforced, and the Legislature permitted the bank to retain its charter unimpaired. The history of this Bank is stated at length in Judge Magrath's brief, on pages 6 and 7.

From this it would appear that this bank enjoyed the right to have her bills received for taxes, whether she paid specie for them or not, *during the continuance of her charter;* that is, till 1852. In 1852, for the first time, as the plain-

tiffs in error state, this bank became subject, in this particular, to the will of the Legislature.

In 1852, upon the renewal of the charter of this bank for the second time, the Legislature enacted that its bills should be received for taxes only so long as the bank should promptly *pay on demand gold or silver coin for their notes.*

The argument drawn from this recital of the history of the Planters and Mechanics' Bank is thus stated in the brief of plaintiffs in error, at page 7:

"We thus see that not before 1852, even in the case of a private bank, was it declared that *only* while its bills were redeemed in gold or silver coin should they be receivable for taxes and other dues to the State."

And this action, in respect to this private bank, is there contrasted with the action of the State, as contended for by the defendant in error, in the act of 1843.

It is scarcely necessary to point the significance of this action. By the very terms of the charter itself this bank had a specific duration of the privilege of paying taxes in its bills, namely, during the continuance of its charter, that is, till 1852. Under this view of the case the State could not repeal that privilege *during the continuance of the charter.* The act of 1843 had, therefore, never affected its bills, and it became necessary in 1852, the first time the State had had it in its power to do so, to place the same restriction upon the bills of this bank which had previously, under the operation of the act of 1843, been placed upon the bills of the Bank of the State and other banks not specially and in like manner protected.

The Bank of the State had no such extension of its privileges. Its bills were not made receivable for taxes during the continuance of its charter. No time was specified as the limit of their receivability, and hence, according to the case of *Furman* v. *Nichol*, the State might at any time terminate the privilege by due notice. The reason why the renewed charter of the Planters and Mechanics' Bank contained an express limitation of the receivability of its

bills for taxes is thus seen to be because up to that time it had enjoyed the unqualified privilege according to the terms of its charter.

On the contrary, upon the renewal of the charter of the Bank of the State in 1852, the act of 1843 had already for many years been operating as a repeal of the absolute privilege accorded to it in the 16th section of its charter, and hence no further legislation was needed to continue the operation of the act of 1843.

The reason of the distinction thus pointed out between the Planters and Mechanics' Bank and the Bank of the State becomes apparent. In the former case the privilege of having its bills receivable for taxes was in terms made to subsist "*during the time for which the said company is incorporated.*"

In the case of the Bank of the State no such provision existed, and hence the State was free to modify its privilege at will.

VII. The act of 1852, renewing the charter of the Bank of the State, contains an express repeal of the 5th section of the charter of 1812. That section made all mortgages taken by the Bank to secure its loans to take effect from their date, and to have priority over all other mortgages not previously recorded.

It is now asked, why this express repeal of the 5th section, and no mention whatever of the repeal or modification of the 16th section?

We answer, for the obvious reason that the 5th section stood, up to 1852, unrepealed and unmodified; while the act of 1843 had for years modified or repealed, *pro tanto*, the 16th section.

Suppose that in 1843 a general act had been passed, declaring that all mortgages within the State should have priority according to the date of their recording: Would not such an act have repealed the 5th section of the charter of 1812? And if it did, would it have been necessary or natural to have again repealed the 5th section in 1852?

VIII. We come now to the examination of the effect of the act of 1857 upon the questions under discussion.

That act is entitled "An act to raise supplies for the year commencing in October, 1857."

Section 8 is in these words:

"That the Comptroller General shall direct the tax collectors and treasurers to receive the taxes and other dues to the State only in notes of the Bank of the State, or of specie-paying banks of this State, or of coin of the United States."

In the former argument of the plaintiffs in error, the act of 1857 was held to be a repeal of the act of 1843. But this was seen to involve an admission that the act of 1843 was an act which excluded the bills of the Bank, unless that Bank was specie-paying; for how or why repeal an act which had no operation on the subject-matter involved in the act of 1857?

In the present argument the act of 1857 plays a new part. It is now treated as an evidence that the act of 1812 was reconcileable with the act of 1843.

It is now said that the act of 1857 shows, that for that year the act of 1843 was not repugnant to the act of 1812; and if not repugnant for that year, then the idea of any repugnancy at all between the two acts is excluded.

The act of 1857 is also treated as an evidence that the act of 1843 was not intended to apply to the bills of the Bank of the State. (Judge Magrath's Brief, pp. 13, 14.)

It is submitted that this is a plain and total misapprehension of the act of 1857, both of its object and of its effect.

We desire to state again with care our view of the proper effect and value to be given to the act of 1857 in this discussion:

The year 1857, as is correctly stated on page 13 of Judge Magrath's brief, was the first year after 1843 when the Bank of the State suspended payment of specie for its bills. Admitting now that the act of 1843 had the force which we have claimed for it, namely, to exclude the bills of the

Bank of the State whenever that Bank ceased to pay specie for its bills; it would not have operated to actually exclude the bills of that Bank from 1843 to 1857.

Now, in 1857 what do we find? We find, *first*, that the Bank, *for the first time since the passage of the act of* 1843, suspends specie-payment, or, in the words of the act of 1843, ceases to be "a specie-paying bank."

We find, *secondly*, that in this year, 1857, for the first and only time from 1843 to the present time, the Legislature introduces into the annual supply act of that year a clause expressly making the bills of this Bank receivable for taxes, without regard to their being redeemed by the Bank in specie.

Now, we ask, what possible reason could have induced this action?

And we answer, there is but one possible explanation, and it is this, namely: that in 1857, the Bank having ceased to be a *specie-paying* bank, the act of 1843 would have *in that year, for the first time*, actually excluded the bills of that Bank; and in order to permit their receipt for taxes, the act of 1843 must be suspended in its operation.

Accordingly, in this exceptional year 1857, we find the exceptional provision in the annual supply act of 1857; and except in that exceptional year, we find nothing of that exceptional provision.

In 1858, the next year, the Bank resumed specie payment, as is stated in Judge Magrath's brief, p. 37, and the act of 1843 no longer excluded its bills; and hence, there was no longer any special mention of these bills in any annual supply act.

We submit with confidence, that this is a complete and entirely satisfactory explanation of the act of 1857; and that instead of supporting the arguments and inferences of the plaintiffs in error, it plainly refutes them.

Instead of showing reconcileability between the 16th section of the act of 1812 and the 1st section of the act of 1843, it shows repugnancy and palpable conflict—a

conflict which it required a special statutory provision to overcome.

Instead of showing that the act of 1843 was not intended to apply to the bills of the Bank of the State, it shows that such was not only the intention of that act, but its actual effect—an effect prevented for that particular year by a special enactment for that purpose.

It is said in Judge Magrath's brief, at p. 37, that the statement that this provision of the supply act of 1857 was not repeated in the similar act of 1858, and, therefore, that the act of 1843 came again into operation, "betrays ignorance of the fact, that in 1858 the banks had all resumed specie payment."

We submit that, on the contrary, such a statement betrays both knowledge and practical recognition of that fact, and that the omission of this provision from the supply act of 1858 was due to the fact, that in 1858 the Bank of the State was again a *specie-paying bank*, and thus brought herself within the requirement of the act of 1843.

When, therefore, it is said that the act of 1857 shows that the acts of 1812 and 1843 were reconcileable, we answer that it shows the exact opposite, and that but for the special provision in the act of 1857, *the tax collectors in that year could not have received one dollar of the bills of the Bank of the State for taxes.*

The act of 1857 is, then, a full confirmation of the argument which we have urged heretofore.

IX. But it is said that no reason can be given for specially excepting the bills of the Bank of the State from the bills of the other suspended banks.

If the fact is clear, the reason would not seem to be of first importance. It does not concern us to know the motives for legislation, unless that legislation is doubtful or obscure. *Sic volo, sic jubeo*, is the rule of legislative action in most cases.

But the ap[illegible] reason of this exceptional legislation in favor of the [illegible]k of the State is set forth throughout the argument of the plaintiffs in error.

The State had a peculiar connection with and interest in this Bank, and it is easy to see that the State might have had reasons for supporting the impaired credit of this Bank, which did not exist in the case of the other banks. It was doubtless thought that the suspension was temporary only, and in that view it might be wise to waive for one year the effect of the existing act of 1843. And so it proved. The Bank resumed specie payment the next year, and no occasion existed for a repetition of the provision of the act of 1857.

But whether such reasons were in the minds of the Legislature in 1857 or not, the fact of their action is beyond dispute. They did, by special provision in the supply act of that year, make the bills of the Bank of the State receivable for taxes while that Bank was in a state of suspension; and we maintain that no sufficient reason for such legislation can be suggested, except *the desire to save these bills for that year from the operation of the act of* 1843.

X. It is again insisted, as it was on the former argument, that the act of 1857 was not, at least in the provision now under discussion, an annual act, but that this provision was a piece of *permanent* legislation.

The court of errors, in the case of the *Graniteville Manuf. Co.* v. *Roper*, 15 Rich. Law, 153, and the supreme court of the State, in the cases which have occasioned these appeals, held that the annual supply acts of that State were strictly *annual* acts, limited in their operation to the years in which they were severally passed, and expiring with those years respectively.

Now, when the court of errors and the supreme court of South Carolina say that these acts are strictly annual, they mean, what we mean in this argument, that so far as those acts are supply acts proper,—that is, so far as the

raising of supplies, the assessment of taxes, the mode and time thereof, and the designation of the funds in which taxes may be paid—so far as anything properly connected with the raising of supplies for a given year is concerned, these acts are strictly limited to the year in and for which they were severally passed.

If the court will examine the citations contained in pages 35 and 36 of Judge Magrath's brief, it will be found that not one of the instances there cited has reference to the raising of supplies for a particular year. They are each and all outside of the raising of supplies.

That the supply acts of South Carolina contain much general legislation is not denied; but it is denied that, upon the subject of raising supplies for any given year, a single instance can be found in which the provisions of those acts are not treated as strictly *annual*.

No instance can be found in which any enumeration of *the kinds of funds* in which taxes may be paid is not limited to the year in which it is made, until we come to the general act of 1843. If the enumeration of funds, contained in the act of 1857, is or was permanent legislation, it stands wholly without precedent.

The only conclusion admissible seems to be that the act of 1857, in its enumeration of funds receivable for taxes, was, in accordance with the nature of that act and with unbroken precedent, limited strictly to *the year commencing in October*, 1857, and that when that year expired, that provision expired with it, and the act of 1843 resumed its previous operation and effect.

XI. There are other arguments contained in the several briefs of the plaintiffs in error which might be examined in detail and successfully answered; but they have been sufficiently noticed on a former occasion in the brief of the defendants in error, which is now in the hands of the court.

It may be said, in a word, that they are made up of inferences and conclusions drawn from the history and policy

of the State and its relations to this Bank. At most, they would only be valuable in throwing light upon a doubtful question of construction. They seem, however, to be introduced here, with a view of showing that the act of 1843, though expressed in clear terms, which manifestly exclude from the list of funds receivable for taxes all bills which are not the bills of *specie-paying* banks, still did not intend such a result, but really intended to permit the receipt of the bills of the Bank of the State, no matter whether that Bank paid specie or not.

It does not seem possible that such a conclusion can be sustained in the face of the plain language of the statutes in question.

It is laid down by a very judicious writer, that "the tendency of all our modern decisions is to the effect that *the intention of the Legislature is to be found in the statute itself*, and that there only the judges are to look for the mischiefs meant to be obviated and the remedy meant to be provided." (*Sedgwick on Stat. and Const. Construction*, 243.)

In the present instance, we have a general and permanent act, into which it would have been easy and natural to have inserted any exceptions which the Legislature might for any reason deem wise or proper, but in which, on the contrary, the terms employed are general, positive, imperative, and in effect exclusive.

How can the meaning of such an act be doubted, or how can its effect be avoided?

XII. The brief of the plaintiffs in error seems to place a construction on the obligation of the State, growing out of the 16th section of the charter of the Bank of the State, which is at variance with the view held by the defendants in error; and it seems proper in conclusion, to state again what views are maintained by the defendants in error upon this point.

The present cases are, in this respect, identical with the case of *Furman* v. *Nichol*, involving the bills of the Bank

of Tennessee. The guaranty of the receivability of the bills of that bank for taxes was in the same words as are found in the 16th section of the charter of the Bank of the State of South Carolina.

In *Furman* v. *Nichol*, it was held as follows: "This guaranty was, *until withdrawn by the State*, a contract between the State and every note-holder of the Bank, obliging the State to receive the notes for taxes. * * * * Until the Legislature, in some proper way, notifies the public that the guaranty thus furnished has been withdrawn, such a contract is binding on the State and within the protection of the Constitution of the United States. * * * It is true that the State had at any time the right to withdraw its guaranty, but it is equally true that it must be done in such manner as not to impair the obligation of its contract with the note-holders of the Bank. That this repealing act operated on all the issues of the Bank after its date cannot be doubted."

The conclusion of the whole case is thus stated:

"The charter of the Bank of Tennessee constituted a contract with the holders of the notes of the Bank, and it was not in the constitutional power of the Legislature to repeal the section so as to affect the notes which at the time were in circulation."

Following this decision, we maintain—

1. That, in the case of the Bank of the State of South Carolina, the 16th section of the charter of 1812 constituted a contract between the State and every holder of the notes of the Bank, requiring the State to receive the said notes for taxes; that this contract attached to each bill issued while the 16th section remained unchanged.

2. That it was at all times in the power of the State to terminate this contract, by withdrawing or modifying the terms of the guaranty.

3. That as to all bills issued after such withdrawal or modification of the guaranty, the obligation of the State was changed in precise accordance with the change of the guaranty.

4. That by the 16th section of the charter of 1812 all the bills of the Bank of the State were made receivable for taxes, without regard to the fact of their present convertibility into coin.

5. That the act of 1843, restricting the bank bills receivable for taxes to those of *specie-paying banks*, was a general and permanent act, and was, as a public act of the State, notice to all the world, that from that time forth no bills of the Bank of the State would be received for taxes unless that bank should be a specie-paying bank.

6. That the act of 1843 thus effected a repeal or modification of the 16th section of the charter of 1812, by restricting the receivability of the bills of the Bank to such period as the Bank should pay specie in redemption of its bills.

7. That all the bills embraced in the present cases, having been issued subsequently to the passage of the act of 1843, were receivable only on condition that the Bank remained a *specie-paying* bank.

8. That at the time of the tender of the bills embraced in the present cases the Bank of the State was not a specie-paying bank, and hence that they were not by law receivable for taxes.

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